

United States
Court of Appeals
for the Ninth Circuit

HASKELL PLUMBING AND HEATING COM-
PANY, a corporation, Appellant,

vs.

JIMMY WEEKS, TOMMY JUDSON, MIKE
CULLINANE, OLE FRANZ, ROY CALLA-
WAY, TOM MULCAHY, BEN HOLBROOK,
JESSE HOBBS and W. VAN SMITH,
Appellees.

Transcript of Record

Appeal from the District Court for the District of Alaska,
Third Division

FILED

OCT 20 1955

PAUL P. O'BRIEN, CLERK

No. 14724

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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For Plaintiffs.

BAILEY E. BELL,
BELL AND SANDERS,

P. O. Box 1599,
Anchorage, Alaska,

For Defendants

In the District Court for the Territory of Alaska,
Division Number Three at Anchorage

No. A-7736

JIMMY WEEKS, TOMMY JUDSON, MIKE
CULLINANE, OLE FRANZ, ROY CALLA-
WAY, TOM MULCAHY, BEN HOLBROOK,
JESSE HOBBS and W. VAN SMITH,
Plaintiffs,

vs.

HASKELL PLUMBING AND HEATING COM-
PANY, INC., a Corporation authorized under
the Laws of the State of Washington and doing
business in the Territory of Alaska,
Defendant.

COMPLAINT

Come now the above named plaintiffs and for
their cause of action against the above named de-
fendant, complain and allege as follows:

First Cause of Action

I.

That the above named plaintiff, Jimmy Weeks,
was employed by the Haskell Plumbing and Heat-
ing Company, Inc., to perform work at King Sal-
mon, Alaska, in connection with a construction
project of the United States Government.

II.

That the defendant named above is a corporation
organized under the laws of the State of Washing-
ton and authorized to do business in the Territory

of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That in addition to the standard wage furnished by the defendant to the plaintiff, an arrangement was made and included in the hire agreement as to the feeding and housing of the plaintiff, and in accordance with the terms of said subsistence agreement, the employee was provided space in a dormitory building maintained by the defendant, in which the plaintiff had his bed and a certain area of space surrounding said bed where he kept his personal property, consisting of luggage and such personal effects as will be hereinafter enumerated, and that said employee used said dormitory for sleeping purposes, recreational purposes, for rest and for storage purposes as aforesaid.

IV.

That on or about the 11th day of October, 1951, shortly after the plaintiff had returned to work from his noon-day meal and while he was absent from the dormitory, a stove or other type heating unit in said dormitory exploded as a result of negligent maintenance of said stove on the part of defendant, causing hot burning oil and segments of live fire to be hurled through the dormitory with such intensity and force as to cause the entire building to burst into flame, and the building and its con-

tents were utterly consumed and destroyed within ten minutes from the time of the explosion.

V.

That plaintiff was unable to remove from said building his personal effects, and they were all destroyed by the fire.

VI.

That the plaintiff lost in said fire through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

1 Suit	\$ 55.00
1 17-Jewel Watch	55.00
1 Electric Razor	25.50
1 Radio	75.00
3 Coats	50.00
1 Dress shoes	20.00
6 Dress shirts	30.00
2 Over-Shoes	10.00
Work Clothes	300.00
<hr/>	
Total damage	\$620.50

Second Cause of Action

I.

For the purposes of this Second Cause of Action, the plaintiff, Tommy Judson, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff Tommy Judson lost in said fire through the negligence of the defendant, items of

personal property as follows, in the amounts indicated.

1 Philson Suit	\$ 42.50
1 Shick Razor	25.00
1 Work Jacket	11.50
1 Wool Plaid Jacket	21.50
1 Gabardine Topcoat	50.00
4 Dress Shirts	12.00
1 Pr. Dress Shoes	18.00
1 Pr. Overshoes	8.00
1 Pr. Slippers	5.00
1 Navy Ring	45.00
1 Pr. Sun Glasses	15.00
1 Parker Pen Set	12.00
Work Clothes	300.00
1 Foot locker	20.00
1 Swansonite Suitcase	35.00
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Total damage	\$620.50

Third Cause of Action

I.

For the purposes of this Third Cause of Action, the plaintiff, Mike Cullinane, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff, Mike Cullinane, lost in said fire through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

2 Suitcases	\$ 75.00
1 Benrus Wrist Watch	75.00
1 Argo Flex Camera	60.00
1 Parker pen set	29.00
1 Blue suit	95.00
1 Gabardine Suit	125.00
2 Pr. Dress Slacks	40.00
4 Dress shirts	16.00
2 Dress Garb. Shirts.....	30.00
1 Sport Jacket	25.00
1 Pr. Dress Shoes	20.00
1 Leather Toilet case.....	7.50
1 Remington Razor	22.00
Work clothes, including under- wear and socks	500.00

Total damage\$1,119.50

Fourth Cause of Action

I.

For the purposes of this Fourth Cause of Action, the plaintiff, Ole Franz, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff Ole Franz lost in said fire through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

1 Pr. Binoculars	\$100.00
1 Argus C-3 Camera.....	60.00
1 22 Auto Pistol	50.00

1 Electric Razor	20.00
1 Sun Glasses	15.00
1 21 Jewel Wrist Watch.....	120.00
1 Suit	80.00
2 Rings	200.00
1 17-Jewel Wrist Watch.....	50.00
1 Gold Nugget Tie Chain.....	75.00
1 Pen and Pencil Set.....	30.00
100 pounds work clothes.....	600.00

Total damage\$1,400.00

Fifth Cause of Action

I.

For the purposes of this Fifth Cause of Action, the plaintiff, Roy Callaway, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff Roy Callaway lost in said fire through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

1 Dress Suit	\$125.00
1 Doz. Silk Shorts	21.00
1 Doz. Undershirts	16.20
4 Sweat Shirts	7.92
2 Pr. Wool Underwear	15.58
4 Pr. Wool work pants.....	35.80
9 ea. Wool work shirts.....	80.55
3 ea. Wool dress shirts.....	53.85
1 top coat	85.00

2 ea. work coats	55.90
3 ea. dress pants	82.50
1 Val-pack	30.00
1 ea. luggage	34.50
2 ea. sea bags	10.00
2 doz. wool work socks.....	38.16
1 doz. dress socks.....	16.68
2 pr. Dress shoes	59.90
2 pr. work shoes	35.00
2 ea. sweaters	30.00
1 ea. rubbers	15.00
1 Rolf's toilet kit	31.00
Toilet articles	45.00
1 ea. wrist watch	87.50
1 ea. vibrator	17.50
2 ea. dress belts	15.00
3 Pr. overhauls	17.37
1 Pr. dress gloves	15.75
8 Pr. work gloves	6.00
1 ea. alarm clock	9.85

Total damage\$1,093.51

Sixth Cause of Action

I.

For the purposes of this Sixth Cause of Action, the plaintiff, Tom Mulcahy, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff Tom Mulcahy lost in said fire through the negligence of the defendant, items of

personal property as follows, in the amounts indicated.

1 suit case	\$ 35.00
1 hand bag	20.00
1 suit clothes	85.00
1 overcoat	50.00
5 suits wool underwear.....	40.00
5 wool work shirts.....	20.00
2 dress shirts	16.00
8 pr. wool socks	8.00
1 fountain pen	15.00
1 Watch	45.00
1 16 Ga. Winchester	85.00
1 pr. hip boots	10.50
1 pr. leather boots	11.00
1 pr. shoe packs	8.00
1 Parker	20.00
1 Pr. Dress shoes	14.00
1 Vibrator	19.50
1 Remington razor	21.00
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Total damage	\$523.00

Seventh Cause of Action

I.

For the purposes of this Seventh Cause of Action, the plaintiff, Ben Holbrook, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff Ben Holbrook lost in said fire

through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

1 Argus 35 MM.	\$ 65.00
Fishing equip.	120.00
1 Parker Pen set	37.00
1 suit case	40.00
1 traveling bag	19.00
1 pack sack	7.00
1 shaving kit	24.00
1 electric razor	22.00
Toiletries	5.00
1 pr. Russel Boots	37.00
1 pr. of work boots.....	18.00
1 pr. shoe packs	16.00
2 pr. dress shoes	28.00
2 suits clothes	150.00
6 dress shirts	80.00
8 pr. dress socks.....	26.00
1 dress jacket	65.00
1 top coat	55.00
2 pr. slacks	38.00
1 pr. dress gloves	6.00
9 pr. underwear	18.00
2 prs. winter underwear.....	20.00
9 pr. wool stockings	17.00
2 doz. work gloves.....	14.00
1 work hat	2.00
4 sweat shirts	14.00
10 work socks	10.00
3 pr. work pants	18.00
1 dress sweater	10.00

5 work shirts	20.00
1 belt	16.00
3 prs. coverall	21.00
Films	40.00

Total damage\$1,078.00

Eighth Cause of Action

I.

For the purposes of this Eighth Cause of Action, the plaintiff, Jesse Hobbs, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff Jesse Hobbs lost in said fire through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

1 suit case	\$ 35.00
1 traveling bag	20.00
1 pack sack	8.00
1 shaving kit	16.00
1 Remington Razor	22.00
Toiletries	6.00
1 pr. slippers	7.00
3 prs. oxfords	30.00
1 pr. work boots	18.00
1 pr. shoe packs	14.00
1 suit of clothes	80.00
3 dress shirts	30.00
12 prs. dress socks	15.00

1 top coat	60.00
2 prs. dress gloves	15.00
6 prs. summer underwear.....	18.00
3 prs. winter underwear	36.00
8 prs. wool stockings.....	16.00
4 prs. light stockings.....	3.00
4 pr. work pants	28.00
6 wool work shirts	50.00
4 sweat shirts	16.00
1 dress sweater	12.00
1 doz. work gloves.....	12.00
1 Stetson hat	15.00
2 work hats	5.00
1 Alpaca Jacket	24.00
1 Parker	35.00
Belt, suspenders, Cig. lighter, etc.	20.00
Upper and lower partial plates	180.00
Fishing equipment	60.00
3 prs. coveralls	24.00
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Total damage	\$930.00

Ninth Cause of Action

I.

For the purposes of this Ninth Cause of Action, the plaintiff, W. Van Smith, adopts, affirms and incorporates all of the allegations of Paragraphs I, II, III, IV and V of the First Cause of Action.

II.

That plaintiff W. Van Smith lost in said fire through the negligence of the defendant, items of personal property as follows, in the amounts indicated.

1 Samsonite bag	\$ 27.50
1 Foot locker	16.00
1 Zenith Trans-Oceanic Radio.	142.00
1 Remington Electric Razor...	22.50
1 Sheaffer Pen and Pencil.....	17.50
1 Ronson Lighter	8.50
1 Model 70 Winchester Rifle with scope and case.....	180.00
1 Argus C3 camera with case..	63.50
Misc. fishing tackle	75.00
1 Westelox travalarm clock....	7.50
Misc. work clothes	300.00
1 Tweed Suit	85.00
1 Gabardine suit	100.00
Misc. toilet articles	10.00
1 pr. dress slacks	20.00
1 sport jacket	27.50
2 sport shirts	18.00
1 pr. dress shoes	22.50
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Total damage	\$1,143.00

That the foregoing plaintiffs have been compelled to retain the services of an attorney for prosecution of this action, and the reasonable fee for said attorney's services is the sum of \$1,000.00.

Wherefore, the above named plaintiffs pray this Honorable Court for judgment as follows:

1. Judgment for Jimmy Weeks in the sum of \$620.50.

2. Judgment for Tommy Judson in the sum of \$620.50.

3. Judgment for Mike Cullinane in the sum of \$1,119.50.

4. Judgment for Ole Franz in the sum of \$1,-400.00.

5. Judgment for Roy Callaway in the sum of \$1,093.51.

6. Judgment for Tom Mulcahy in the sum of \$523.00.

7. Judgment for Ben Holbrook in the sum of \$1,078.00.

8. Judgment for Jesse Hobbs in the sum of \$930.00.

9. Judgment for W. Van Smith in the sum of \$1,143.00.

10. For attorney's fee in the sum of \$1,000.00.

11. For costs in this action incurred.

12. For such other relief as to this Honorable Court seems equitable and just in the premises.

/s/ HAROLD J. BUTCHER,
Attorney for Plaintiffs

Duly Verified.

[Endorsed]: Filed May 17, 1952.

[Title of District Court and Cause.]

MOTION TO DISMISS AND TO STRIKE

Comes now the defendant, Haskell Plumbing and Heating Company, Inc., a Corporation, and moves to dismiss the many causes of action set forth and pleaded in the Complaint filed herein, or if the Court refuses to dismiss said action, then to dismiss all causes of action other than the one first stated by Jimmy Weeks, the plaintiff first named, and also moves to strike from the Complaint all causes of action other than Cause of Action No. I, and for grounds of this motion states that there is a misjoinder of parties plaintiff in this matter and a misjoinder of causes of action in that there is a large number of plaintiffs named in said Complaint who are, according to the pleadings, not associated together, are not partners, and are not joint claimants, and have no legal connection whatsoever, and are not connected in any way, and are attempting to file a multiple suit against the defendant, which is not authorized by law or by Rules 19 or 20 of the Federal Rules of Civil Procedure, as said actions are not anticipated or covered by said rules, and the defendant could not have a fair and impartial trial in an action such as is set forth in the Complaint; that this is a jury case and would be confused to the jury beyond correction by the Court, and should therefore be dismissed, or all causes of action other than Cause of Action No. I should be dismissed, or all causes of action and all allegations other than Cause of Action No. I should be stricken.

For the further reason that none of the causes of action attempted to be pleaded herein state a cause of action upon which any relief should be granted to any of the plaintiffs, and this subdivision of the motion applies to each cause of action stated in the Complaint.

Wherefore, defendant moves the Court to dismiss said suit in its entirety, or in the alternative, to dismiss all causes of action attempted to be pleaded against the defendant other than Cause of Action No. I, or that all causes of action, other than Cause of Action No. I, be stricken from the pleadings and that each and every cause of action be dismissed for failure to state a cause of action in favor of any plaintiff and against the defendant.

Dated at Anchorage, Alaska, this 15th day of April, 1953.

BELL & SANDERS,
/s/ By BAILEY E. BELL,
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed April 15, 1953.

[Title of District Court and Cause.]

HEARING ON MOTION TO DISMISS AND TO STRIKE

Now at this time hearing on motion to dismiss and to strike in cause No. A-7736, entitled Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz,

Roy Callaway, Tom Mulcahy, Ben Holbrook, Jesse Hobbs and W. Van Smith, Plaintiffs, versus Haskell Plumbing and Heating Company, Inc., a corporation authorized under the Laws of the State of Washington and doing business in the Territory of Alaska, Defendant, came on regularly before the Court, Harold J. Butcher, appearing for and in behalf of the plaintiff and William Sanders appearing for and in behalf of the defendant.

Argument was had to the Court by both sides.

Whereupon the Court having heard the arguments of respective counsel and being fully and duly advised in the premises, announced that motion denied and defendant granted 20 days to answer.

Entered April 24, 1953.

[Title of District Court and Cause.]

ANSWER

Comes now the above named Defendant, Haskell Plumbing and Heating Company, Inc., a corporation, and for answer to the Plaintiffs' Complaint filed herein, admits, denies and alleges as follows, to-wit:

Answer to First Cause of Action

I.

Defendant is not sufficiently informed at this time so as to form an opinion as to the truth of the allegations in the first paragraph of the First Cause

of Action, and therefore, denies said allegations and the whole thereof.

II.

Defendant admits the allegations of the second paragraph of Plaintiffs' First Cause of Action.

III.

Defendant denies the allegations of the third paragraph of the First Cause of Action, and the whole thereof.

IV.

Defendant denies the allegations in the fourth paragraph of the First Cause of Action, and the whole thereof.

V.

Defendant is not sufficiently advised so as to form an opinion as to the truth or falsity of the allegations in Paragraph V of the First Cause of Action, and therefore, denies said allegations and the whole thereof.

VI.

Defendant denies the allegations of Paragraph VI of the First Cause of Action and the whole thereof.

Answer to Second Cause of Action

I.

Defendant adopts the allegations of the first five (5) paragraphs of its answer to the Plaintiffs' First Cause of Action, and makes the same a part of this its Answer to Plaintiffs' Second Cause of Action, set forth in said Complaint, and in addition thereto

denies all of the allegations set forth in the Second Cause of Action, and the whole thereof.

Answer to Third Cause of Action

I.

Defendant for answer to the Third Cause of Action set forth in Plaintiffs' Complaint, adopts all of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto denies each and every allegation in said Third Cause of Action, and the whole thereof.

Answer to Fourth Cause of Action

I.

Defendant for answer to the Fourth Cause of Action set forth in Plaintiffs' Complaint, adopts all of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto, denies each and every allegation in said Fourth Cause of Action, and the whole thereof.

Answer to Fifth Cause of Action

I.

Defendant, for answer to the Fifth Cause of Action set forth in Plaintiffs' Complaint, adopts all of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto, denies each and every allegation in said Fifth Cause of Action, and the whole thereof.

Answer to Sixth Cause of Action

I.

Defendant, for answer to the Sixth Cause of Action set forth in Plaintiffs' Complaint, adopts all

of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto, denies each and every allegation in said Sixth Cause of Action, and the whole thereof.

Answer to Seventh Cause of Action

I.

Defendant, for answer to the Seventh Cause of Action set forth in Plaintiffs' Complaint, adopts all of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto, denies each and every allegation in said Seventh Cause of Action, and the whole thereof.

Answer to Eighth Cause of Action

I.

Defendant, for answer to the Eighth Cause of Action set forth in Plaintiffs' Complaint, adopts all of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto, denies each and every allegation in the said Eighth Cause of Action, and the whole thereof.

Answer to Ninth Cause of Action

I.

Defendant, for answer to the Ninth Cause of Action set forth in Plaintiffs' Complaint, adopts all of the first five (5) paragraphs in its Answer to the First Cause of Action, and in addition thereto, denies each and every allegation in said Ninth Cause of Action, and the whole thereof.

Wherefore, Defendant having fully answered Plaintiffs' Complaint, prays that each and all of the above named Plaintiffs' recover nothing thereby, and that the purported causes of action be dismissed; and that this Defendant recover judgment against each and all of the above named Plaintiffs on each and all of the separate causes of action set forth therein; and that this Defendant recover its costs and attorneys fees in this action.

Dated at Anchorage, Alaska, this 6th day of May, 1953.

BELL & SANDERS,
/s/ By BAILEY E. BELL,
Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed May 7, 1953.

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Jimmy Weeks, within fifteen days from the date of service hereof.

1. Please state your full name.

A. Gaylord Wilfred Weeks.

2. Please state your complete present address.

A. Local 367, United Assn. Plumbers, Steamfitters, Carpenters Hall, 4th Street at Denali, Anchorage, Alaska.

3. Please state your residence address as of the 17th day of May, 1952.

A. Same address as above.

4. For whom were you working on the 11th day of October, 1951?

A. Haskell Plumbing and Heating Company.

5. Where were you living on that date?

A. The Plumbers Bunkhouse at King Salmon, Alaska.

6. How many men were living in the same place at that time?

A. I believe there were eleven men there.

7. Please give me an exact list of the names and addresses of the men who were living there at that time.

A. I do not know the addresses of the men, and cannot recall the names of the other men in addition to the ones named above.

8. Was there a fire that took place on that date?

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. I was at work on the main construction job.

10. What time of day was it that the fire took place?

A. Approximately at 1:00 p.m.

11. Do you know the name of any men or women who were in the alleged dormitory immediately

preceding the explosion referred to in your Complaint?

A. I do not know them.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. I do not know.

13. Where was said man at that time?

A. I do not know.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. There were two Space Heaters there, Oil fired.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No, I did not.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. I do not.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. See previous answer.

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. Approximately 1:30 p.m. same date.

19. How did you learn about it?

A. Mr. Mulcahy told me.

20. How soon thereafter did you go to the dormitory?

A. Immediately.

21. What did you do after you arrived there?

A. I stood and looked at the ruins.

22. What did you say or hear said at that time?

A. I do not remember.

23. How long had you been living in that place?

A. About four months.

24. What was the date of your coming to Alaska during the year 1951?

A. I do not remember.

25. How did you come to Alaska?

A. Personal Automobile.

26. If you came by plane, please give us the name of the company with whom you rode?

A. See above.

27. Where did you board said plane?

A. See above.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. Already answered.

29. Do you know who owned the building that you lost your property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc., have with relation to the building that was burned?

A. It is my belief that Haskell Plumbing and Heating, Inc., had control and had charge of the burned building.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing and Heating, Inc. \$45.70 Week.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Board was furnished for that amount, Utilities were furnished.

34. What kind of a building was it that was destroyed by fire?

A. Bunkhouse, Quonsett type.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. Answered above. (Haskell Plumbing and Heating, Inc.)

36. Was there a fire department of any kind came to the fire while it was still burning?

A. No.

37. If your answer is Yes, please state who was in charge of that fire department.

A. See above.

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. I do not know.

39. Where was this oil purchased and by whom was it delivered?

A. I do not know.

40. You have alleged the loss of one suit. Where did you buy this suit, from whom did you buy it,

what did you pay for it, what color was it, how long had you worn it?

A. Suit, Man's, Brown color, bought in February previously, in Evansville, Ind. I do not recall the name of the store. I paid \$100.00 approximately.

41. You have alleged the loss of a 17 jewel watch. What was the make of this watch? Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. I paid \$55.00 for this watch at Rossville, Indiana, bought in January of the same year, 1951. It was a 17-jewel pocket watch, silver case. I do not recall the brand of it.

42. You have alleged the loss of an electric razor. Please state the kind of razor it was—the name thereof, from whom you purchased it, and what is the address of the place you purchased it? What date did you purchase it, what did you pay for this electric razor?

A. Remington, DeLuxe, purchased in Anchorage next door to the Oyster Loaf Cafe on 4th Avenue. I paid approximately \$27.50. It was bought sometime in March, 1951.

43. From whom did you purchase the radio referred to in your Complaint? What kind of Radio was it? Was it in working condition at the time of the fire? What is the address of the person from whom you purchased this radio? What did you pay

for the radio when you purchased it and on what date did you purchase it?

A. It was an International (non-Portable type) bought from a little Radio Shop in Anchorage, Alaska, on D Street between 4th and 5th on or about the 15th of September, 1951. I paid \$75.00 for it.

44. Please describe the three coats that you claim to have lost in the fire. Please give the name and address from whom you purchased each of the coats. Please give the price paid therefor. Please give the date or approximate date of the purchase thereof. Please state whether or not they were extensively used prior to the fire.

A. 1 Sport coat, red color, man's, bought 1 year before. 1 Sport coat, brown checked, man's, bought about the same time. 1 Sport jacket, green color, man's, bought at about the same time. I do not recall at this time where I bought these, but it is my opinion that they cost me approximately \$20.00 apiece.

45. You have sued for one pair of dress shoes. Please describe the dress shoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid therefor. Please state the kind and trade name of said shoes.

A. 1 pair of brown color Oxford type Dress shoes, size 8½. I do not recall the brand name of these shoes. I bought them at the same time as I bought the within mentioned suit, at the same location, and in my opinion the price paid was \$20.00.

46. Please state how many dress shirts you had burned in this fire, describe the dress shirts that were burned. Please state the name and address where you purchased said shirts, state the price you paid therefor, and state the length of time you had worn these shirts. Please state the design and color thereof.

A. 6 Dress shirts at \$5.00 apiece. I do not remember exactly where I bought them.

47. State the kind and description of the work clothes that you claim were burned, state from whom and the address of whom you purchased these work clothes, furnishing a list thereof. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. They were ordinary work clothes, consisting of underwear, pants, overalls, shoes, overshoes, work coats, work jackets, work caps and gloves, etc., which I had accumulated in the last year or two and which were necessary in the kind of work I was performing, and it is my opinion it would require about \$300.00 to replace the quality in the amount lost.

48. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. It was the general impression among the men gathered around the fire that the heating unit had exploded and set the dormitory on fire; and, inasmuch as Haskell Plumbing and Heating Company,

Inc., provided us with housing in this dormitory and took care of the heat, the negligence which caused the explosion would be their negligence.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Tommy Judson, within fifteen days from the date of service hereof.

1. Please state your full name.
A. Thomas B. Judson.
2. Please state your complete present address.
A. 326 - 11th Avenue, Anchorage.
3. Please state your residence address as of the 17th day of May, 1952.
A. Anchorage, Alaska.
4. For whom were you working on the 11th day of October, 1951?

A. Haskell Plumbing & Heating Company, Inc.

5. Where were you living on that date?

A. Haskell Plumbing & Heating Company dormitory at King Salmon, Alaska.

6. How many men were living in the same place at that time?

A. To the best of my belief, 12 men.

7. Please give me an exact list of the names and addresses of the men who were living there at that time.

A. To my best recollection, the men living in the barracks, and the only addresses known to me, were as follows:

Jimmy Weeks, King Salmon, Alaska.

Mike Cullinane, King Salmon, Alaska.

Ole Franz, King Salmon, Alaska.

Roy Callaway, King Salmon, Alaska.

Tom Mulcahy, King Salmon, Alaska.

Ben Holbrook, King Salmon, Alaska.

Jesse Hobbs, King Salmon, Alaska.

W. Van Smith, King Salmon, Alaska.

Myself, Tommy Judson, King Salmon, Alaska.

I do not know the names of the other three men, and the only addresses I ever knew for them was King Salmon, Alaska.

8. Was there a fire that took place on that date?

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. I was working on a diesel cooling system, located approximately 1 mile from the fire.

10. What time of day was it that the fire took place?

A. Approximately 1:15.

11. Do you know the name of any men or women who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. I know of no one who was in the dormitory at that time.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. There was a bull cook, whose name I do not recall, who was responsible for keeping the fire in the heating unit.

13. Where was said man at that time?

A. I have no knowledge of his whereabouts.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. Just an ordinary oil-burning heating unit.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. See previous answers.

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. Approximately 1:30.

19. How did you learn about it?

A. Foreman Mulcahy came by in a truck and told me the barracks were on fire.

20. How soon thereafter did you go to the dormitory?

A. Immediately.

21. What did you do after you arrived there?

A. Upon my arrival, the building was almost disintegrated, and the heat was so great that we could not approach the fire.

22. What did you say or hear said at that time?

A. I said, "I don't see how it could have happened so fast."

23. How long had you been living in that place?

A. Approximately six weeks.

24. What was the date of your coming to Alaska during the year 1951?

A. I never came to Alaska.

25. How did you come to Alaska?

A. See previous answer.

26. If you came by plane, please give us the name of the company with whom you rode?

A. See previous answers.

27. Where did you board said plane?

A. See previous answers.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. See previous answers.

29. Do you know who owned the building that

you lost your property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc., have with relation to the building that was burned?

A. Haskell Plumbing & Heating Co., Inc. furnished the barracks, assigned us to beds therein, and required that we live there.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing & Heating Company, Inc., furnished the quarters and board as part of our hire agreement.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Everything was furnished by Haskell Plumbing & Heating Company, Inc.

34. What kind of a building was it that was destroyed by fire?

A. Quonset hut.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. No.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. Yes.

37. If your answer is Yes, please state who was in charge of that fire department.

A. Fire equipment was in charge of U. S. Army.

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. Haskell Plumbing & Heating Company, Inc., to the best of my knowledge.

39. Where was this oil purchased and by whom was it delivered?

A. I have no knowledge of who delivered the oil or from where it was purchased.

40. You have alleged the loss of one suit. Where did you buy this suit, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. This was a Philson, Alaskan tuxedo, green in color. I purchased it at Rutherford's Anchorage, in 1950, and paid \$42.50 for it.

41. You have alleged the loss of an electric razor. Please state from whom you purchased it and when you purchased it. Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. This was a Schick razor, which I bought from the clerk at Cape Newenham, who sent to Bremerton, Washington, for it. I paid him about \$25.00 for it.

42. You have alleged the loss of a work jacket. Please state the name and address from whom you purchased it, please give the price paid therefor. Please give the date or approximate date of the

purchase thereof. Please state whether or not it was used extensively prior to the fire.

A. This was a mouton army jacket purchased at a war surplus store in Anchorage. I paid \$11.50 for it and had had it two or three months.

43. You have alleged the loss of a wool plaid jacket. Where did you buy this jacket, from whom did you buy it, what did you pay for it, how long had you worn it?

A. This was a green and white cruiser jumper. I think I purchased it at Rutherford's, but am not sure. I paid \$21.50 for it, and had had it a few months. I had worn it infrequently.

44. You have alleged the loss of one gabardine topcoat. Where did you buy this topcoat, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. I bought this gabardine topcoat in Anchorage at one of the shops on 4th Avenue—Rutherford's, I. Bayles, Hopkins, Koslosky's, the Hub—I do not recall which. This was in the fall of 1950, and I know that I paid \$50.00 for it, and wore it only when I was dressed up, which was not often.

45. Please describe the four dress shirts that you claim to have lost in the fire. Please give the name and address from whom you purchased each of the shirts. Please give the price paid therefor. Please give the date or approximate date of the purchase thereof. Please state whether or not they were extensively used prior to the fire.

A. These four dress shirts were tan, blue, green and white, and were bought at various times in

1951. I paid approximately \$3.00 apiece for them, but do not remember where they were purchased. Had worn them once or twice each.

46. You have sued for one paid of dress shoes. Please describe the dress shoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid therefor. Please state the kind and trade name of said shoes.

A. These were brown dress shoes purchased, to my best recollection from Rutherford's in Anchorage, Alaska, during the summer of 1951. Paid \$18.00 to my best recollection. I do not recall the brand, but believe they were Florsheims.

47. You have sued for one pair of overshoes. Please describe the overshoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid therefor. Please state the kind and trade name of said overshoes.

A. To my best recollection, these overshoes were purchased from Rutherford's. They were black rubber, zipper type. Paid \$8.00 for them. Do not know the brand or trade name of said overshoes.

48. You have sued for one Navy ring. Please give us a full description of it. From whom did you purchase it, and when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. This was a large insignia ring, solid gold, for which I paid \$45.00 when I was in the Navy in about

the year 1944. I do not recall from whom I purchased said ring.

49. You have sued for one paid of sun glasses. From whom were they purchased? When were they purchased? Please give the name of the person or corporation from whom you purchased them, and please state the amount you paid therefor.

A. These were Polaroid type, high-class sunglasses, purchased while I was in the Navy, approximately in 1944. It is my recollection that I paid \$15.00 for them, and I had worn them often, but they remained in first-class condition.

50. You have sued for one Parker Pen set. Please give a full description of it. From whom did you purchase it, and when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. This was a Parker pen set and a gift from my mother, given to me about Christmas of 1949. Both pen and pencil were in good condition, and used infrequently. I have compared similar sets, which have a value of \$25.00.

51. State the kind and description of the work clothes that you claim were burned, state from whom and the address of whom you purchased these work clothes, furnishing a list thereof. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. I lost better than \$300.00 worth of work clothes. These consisted of numerous pairs of over-

alls, work pants, heavy underwear, socks, work shoes, jackets and work gloves, purchased to the best of my recollection at various stores and commissaries in Juneau and Anchorage. I do not recall exactly where these items were purchased, but I do know there was in excess of \$300.00 worth. If I were required to purchase said work clothes in the quantity and quality of those I had at the time of the loss, it would cost me in excess of \$300.00 to do so.

52. Please describe in full the foot locker and Swansonite suitcase you alleged were lost in the fire. Please give the name, address and purchase price of each article.

A. To the best of my recollection, I purchased the Swansonite suitcase in Juneau in about 1948, paying \$35.00 for the same. I do not know from what store I bought it, but it was one of the regular merchants on the main street. The foot locker I purchased in Anchorage at a war surplus store. It was new when I bought it and I paid \$20.00. I had had it approximately one year and it was in good condition.

53. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. We were furnished living quarters by the defendant and a place to live in, with bed, hooks and hangers and place in which to store our personal effects; and it was the duty of the defendant to keep said quarters safe, and the barracks burned as the result of an explosion in the heating unit, which

heating unit was under the control of the defendant.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Mike Cullinane, within fifteen days from the date of service hereof.

1. Please state your full name.

A. Michael Emmett Cullinane.

2. Please state your complete present address.

A. 440 D. Street, Anchorage, Alaska.

3. Please state your residence address as of the 17th day of May, 1952.

A. Either in Anchorage or Kenai.

4. For whom were you working on the 11th day of October, 1951?

A. Haskell Plumbing and Heating Company, Inc.

5. Where were you living on that date?

A. Living in quarters provided for us by Haskell Plumbing & Heating Company at King Salmon.

6. How many men were living in the same place at that time?

A. I don't recall exactly—about eleven, maybe.

7. Please give me an exact list of the names and addresses of the men who were living there at that time.

A. To my best recollection, the men living in the barracks were:

Jimmy Weeks—only address known to me was King Salmon, Alaska.

Tommy Judson—only address known to me was King Salmon, Alaska.

Ole Franz—only address known to me was King Salmon, Alaska.

Roy Callaway—only address known to me was King Salmon, Alaska.

Ben Holbrook—only address known to me was King Salmon, Alaska.

Jesse Hobbs—only address known to me was King Salmon, Alaska.

W. Van Smith—only address known to me was King Salmon, Alaska.

I do not know the names of the other men.

8. Was there a fire that took place on that date?

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. Working in generator room at powerhouse at base.

10. What time of day was it that the fire took place?

A. Shortly after lunch.

11. Do you know the name of any men or women who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. No.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. It was the duty of the bull cook. I don't remember his name.

13. Where was said man at that time?

A. I do not know.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. Two big space heaters.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. See previous answer.

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. Shortly after lunch.

19. How did you learn about it?

A. The foreman came over to where I was working and told us.

20. How soon thereafter did you go to the dormitory?

A. Immediately.

21. What did you do after you arrived there?

A. We looked at the fire.

22. What did you say or hear said at that time?

A. I cannot recall at this time.

23. How long had you been living in that place?

A. Approximately three months.

24. What was the date of your coming to Alaska during the year 1951?

A. I did not come to Alaska during the year 1951.

25. How did you come to Alaska?

A. By plane.

26. If you came by plane, please give us the name of the company with whom you rode?

A. Northwest Airlines.

27. Where did you board said plane?

A. Seattle, Washington.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. _____

29. Do you know who owned the building that you lost your property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumb-

ing and Heating Company, Inc., have with relation to the building that was burned?

A. As far as I know, they furnished us the barracks to live in.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing and Heating Company, and I did not pay anything.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Board, place to sleep, washing facilities were furnished us. I did not pay anything.

34. What kind of a building was it that was destroyed by fire?

A. Quonset hut.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. No.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. Not that I know of or saw.

37. If your answer is Yes, please state who was in charge of that fire department.

A. —————

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. I do not know.

39. Where was this oil purchased and by whom was it delivered?

A. I do not know.

40. You have alleged the loss of two suitcases. Where did you buy these suitcases, from whom did you buy them, what did you pay for them, how long had you used them?

A. One suitcase was purchased in Adak and one in Seattle. The first was purchased from the **Navy** store at Adak, for which I paid \$30.00, and the other I paid \$45.00 for and bought in Seattle along Third Avenue—I do not recall the name of the store. I had had the suitcases approximately one year and had used them on several trips.

41. You have alleged the loss of a wrist watch. What was the make of this watch? Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. This was a Gruen 17 or 21-jewel, which I purchased at Peter Michael's Jewellery Store in Seattle, to the best of my recollection. Paid \$75.00. Purchased in 1950. Was in good condition.

42. From whom did you purchase the camera referred to in your Complaint? Was it in working condition at the time of the fire? What is the address of the person from whom you purchased this camera? What did you pay for the camera when you purchased it and on what date did you purchase it?

A. Argo Flex, in good condition. Bought at Navy store at Adak in 1950. Paid \$60.00.

43. You have sued for one Parker Pen set. Please give a full description of it. From whom did you purchase it, and when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. This was a pen and pencil set from Loman & Hanford, Seattle, bought in the summer of 1950, for which I paid \$29.00.

44. You have alleged the loss of one suit. Where did you buy this suit, from whom did you buy it, what did you pay for it, how long had you worn it?

A. One blue suit, purchased for \$95.00 from Schmidt the Tailor in Seattle in 1947, I do not recall the exact date. Had worn it numerous times, but it was in perfect condition.

45. You have alleged the loss of one gabardine suit. Where did you buy this suit, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. This gabardine suit I bought from Klopstein's in Seattle in the summer of 1950 for \$125.00. Brown in color. Worn infrequently.

46. You have alleged the loss of one pair dress slacks. Where did you buy these slacks, from whom did you buy them, what did you pay for them, what color were they, how long had you worn them?

A. I did not allege the loss of one pair of slacks, but in fact alleged the loss of two pairs. These were made by Schmidt the Tailor in Seattle in 1947. Paid

about \$30.00 a pair. One pair was tan and the other was brown. Had worn them off and on for approximately three years.

47. Please state how many dress shirts you had burned in this fire, describe the dress shirts that were burned. Please state the name and address where you purchased said shirts, state the price you paid therefor, and state the length of time you had worn these shirts. Please state the design and color thereof.

A. I lost 4 dress shirts, all white. Do not recall from whom I purchased them, but paid approximately \$4.00 apiece for them in summer of 1950. Do not know the design.

48. Please state how many gabardine shirts you had burned in this fire, describe the gabardine shirts that were burned. Please state the name and address where you purchased said shirts, state the price you paid therefor, and state the length of time you had worn these shirts. Please state the design and color thereof.

A. I lost 2 dress gabardine shirts which I had purchased from Rutherford's in Anchorage in the fall of 1950. Paid \$15.00 apiece. These were in new condition. Colors were brown and green.

49. Please describe the sport jacket that you claim to have lost in the fire. Please give the name and address from whom you purchased this jacket. Please give the price paid therefor. Please give the date or approximate date of the purchase thereof. Please state whether or not it was extensively used prior to the fire.

A. I purchased this sport jacket from Rutherford's in fall of 1950 for \$25.00. I had used it about 6 months.

50. You have sued for one paid of dress shoes. Please describe the dress shoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid therefor. Please state the kind and trade name of said shoes.

A. These were brown dress shoes, French & Shriner brand, purchased from the Northern Commercial Company shortly after Labor day of 1951. Wore them 2 or three days in town and then put them away for future town wear. Paid \$20.00.

51. Please describe the leather toilet case. Where was it purchased, from whom, and what did you pay therefor?

A. I think this was a light brown case. Bought it at Loman & Hanford in Seattle in summer of 1950, and paid \$7.50. It was in good condition.

52. You have alleged the loss of an electric razor. Please state the kind of a razor it was—the name thereof, from whom you purchased it, and what is the address of the place you purchased it? What date did you purchase, what did you pay for this electric razor?

A. This was a Remington electric razor, bought for \$22.00 from Remington store in Seattle in summer of 1950.

53. State the kind and description of the work clothes that you claim were burned, state from whom and the address of whom you purchased

these work clothes, furnishing a list thereof. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. These work clothes consisted of overalls, work pants, heavy underwear, socks, work shoes, jackets, work gloves and hats, boots, overshoes, mackinaws, etc., worth at least \$500.00 altogether, and purchased in various places at different times.

54. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. Haskell Plumbing and Heating Company furnished us the living quarters and took care of the stoves, and it was their duty to keep the place safe from burning down.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure,

submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Ole Franz, within fifteen days from the date of service hereof.

1. Please state your full name.
 - A. Lyle Wesly "Ole" Franz.
2. Please state your complete present address.
 - A. Box 765, Cheney, Wash.
3. Please state your residence address as of the 17th day of May, 1952.
 - A. c/o E. O. Nay, Whittier, Alaska.
4. For whom were you working on the 11th day of October, 1951?
 - A. Haskell Plumbing & Heating Co.
5. Where were you living on that date?
 - A. King Salmon, Alaska.
6. How many men were living in the same place at that time?
 - A. Eleven.
7. Please give me an exact list of the names and addresses of the men who were living there at that time?
 - A. I don't know.
8. Was there a fire that took place on that date?
 - A. Yes.
9. What were you doing on the 11th day of October, 1951?
 - A. Working.
10. What time of day was it that the fire took place?
 - A. Afternoon.
11. Do you know the name of any men or women

who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. Do not know.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. Do not know.

13. Where was said man at that time?

A. Do not know.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. Space heaters.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. _____

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. Approx. 2-3 o'clock.

19. How did you learn about it?

A. Seen the smoke.

20. How soon thereafter did you go to the dormitory?

A. Right away.

21. What did you do after you arrived there?

A. Nothing. It was too late to do anything.

22. What did you say or hear said at that time?

A. I do not recall.

23. How long had you been living in that place?

A. Six weeks.

24. What was the date of your coming to Alaska during the year 1951?

A. April, 1950.

25. How did you come to Alaska?

A. Plane.

26. If you came by plane, please give us the name of the company with whom you rode.

A. I do not recall.

27. Where did you board said plane?

A. Seattle, Wn.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. —————

29. Do you know who owned the building that you lost property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc. have with relation to the building that was burned?

A. It is my belief that Haskell P. & H. Co. had control and had charge of the burned bldg.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing & Heating Co.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Everything was furnished at no cost to me.

34. What kind of a building was it that was destroyed by fire?

A. Metal Army type bldg.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. No.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. I do not recall.

37. If your answer is Yes, please state who was in charge of that fire department.

A. _____

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. I do not know.

39. Where was this oil purchased and by whom was it delivered?

A. I do not know.

40. From whom did you purchase the binoculars referred to in your Complaint? What kind of binoculars were they? What is the address of the person from whom you purchased the binoculars? What did you pay for the binoculars when you purchased them?

A. Paid \$100.00 for German made binoculars size 10-30. I do not know name or address of person purchased from. It was from a carpenter at Fort Rutheson in 1948.

41. From whom did you purchase the camera referred to in your Complaint? Was it in working condition at the time of the fire? What is the address of the person from whom you purchased this camera? What did you pay for the camera when you purchased it and on what date did you purchase it?

A. Argus C3 in perfect condition. A soldier bought it in King Salmon Army R.X. Cost \$60.00.

42. From whom did you purchase the pistol referred to in your Complaint? What kind of pistol was it? Was it in working condition at the time of the fire? What is the address of the person from whom you purchased this pistol? What did you pay for the pistol when you purchased it and on what date did you purchase it?

A. 22 High Standard New. A1 Fox D & D Bar.

43. You have alleged the loss of an electric razor. Please state the kind of a razor it was—the name thereof, from whom you purchased it, and what is the address of the place you purchased it? What date did you purchase it, what did you pay for this electric razor?

A. Remington bought in Seattle in 1950, \$22.50. Exact date and name of store can be had from Remington Co. headquarters.

44. You have alleged the loss of a 21 jewel wrist watch. What was the make of this watch? Please

give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. 21 jewel Bulova and gold band price \$120.00. Pat Elkins, address unknown at present.

45. You have alleged the loss of one suit. Where did you buy this suit, from whom did you buy it, what did you pay of it, what color was it, how long had you worn it?

A. Leonard Custom Tailors. \$96.00. Grey. Worn very little.

46. Please describe the two rings that you claim to have lost in the fire. Please give the name and address from whom you purchased each of the rings. Please give the price paid therefor.

A. Diamond $\frac{1}{2}$ carat ring—Burts Jewelry, Seattle, Wash. Price \$150.00. Ruby ring—a present. I think valuation was 100 to 200 dollars.

47. You have alleged the loss of a 17 jewel wrist watch. What was the make of this watch? Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. 17 Illinois. A present. Price \$50.00.

48. You have alleged the loss of one gold nugget tie chain. Please give us a full description of it, from whom you purchased it, the address of the person or corporation from whom you purchased it,

and please state the amount you paid for it.

A. Anchorage Jewelers, Anchorage, Alaska.
Price \$75.00.

49. You have alleged the loss of a pen and pencil set. Please state the kind of a pen and pencil set it was—the name thereof, from whom you purchased it, and what is the address of the place you purchased it? What did you pay for this pen and pencil set?

A. Three piece Schaeffer set. Price \$30.00. J. Vic Brown Jewelry Store, Anchorage, Alaska.

50. State the kind and description of the work clothes that you claim were burned, state from whom and the address of whom you purchased these work clothes, furnishing a list thereof. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. Air Line Company. Weight on my baggage was over 100 pounds. It would be impossible to list each article and where purchased as was two suitcases and foot locker full. Approximate price \$600.

51. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. Company used deisel oil instead of stove oil and added gasoline to make it burn better.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Roy Callaway, within fifteen days from the date of service hereof.

1. Please state your full name.

A. Roy Avid Callaway.

2. Please state your complete present address.

A. P. O. Box 786, Anchorage, Alaska.

3. Please state your residence address as of the 17th day of May, 1952.

A. Anchorage, Alaska.

4. For whom were you working on the 11th day of October, 1951?

A. Haskell Plumbing and Heating Company, Inc.

5. Where were you living on that date?

A. King Salmon, Alaska.

6. How many men were living in the same place at that time?

A. Approximately 12 men were living in the dormitory.

7. Please give me an exact list of the names and addresses of the men who were living there at that time.

A. There were living in the dormitory at the same time I was there: Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz, Tom Mulcahy, Ben Holbrook, Jesse Hobbs and W. Van Smith. There were three other men, whose names I do not recall. The only addresses I knew for any of them was King Salmon, Alaska.

8. Was there a fire that took place on that date?

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. I was installing plumbing equipment in a building approximately one mile from the dormitory.

10. What time of day was it that the fire took place?

A. Approximately 1:15.

11. Do you know the name of any men or women who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. I was not there and therefore do not know.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. I do not know.

13. Where was said man at that time?

A. I do not know.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. There were two regular oil heaters.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. See above.

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. About 1:30 p.m.

19. How did you learn about it?

A. Mr. Mulcahy told me.

20. How soon thereafter did you go to the dormitory?

A. Immediately.

21. What did you do after you arrived there?

A. Stood and watched the fire, which had by this time almost completely destroyed the building.

22. What did you say or hear said at that time?

A. I do not recall.

23. How long had you been living in that place?

A. One month.

24. What was the date of your coming to Alaska during the year 1951?

A. I did not come to Alaska in 1951.

25. How did you come to Alaska?

A. Plane.

26. If you came by plane, please give us the name of the company with whom you rode?

A. Northwestern Airlines.

27. Where did you board said plane?

A. Seattle, Washington.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. See above.

29. Do you know who owned the building that you lost your property in by reason of the fire mentioned in your suit?

A. I do not.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc., have with relation to the building that was burned?

A. I worked for Haskell Plumbing & Heating Company. They provided me with living space in the dormitory and assumed control over the same.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing & Heating Company, Inc. Quarters were furnished by it over and above wages.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Board and room, blankets, sheets, bed. Heat was furnished by Haskell Plumbing & Heating Company without charge.

34. What kind of a building was it that was destroyed by fire?

A. Quonset Hut.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. My hire agreement with Haskell Plumbing & Heating Company provided for living quarters over and above wages.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. I do not recall.

37. If your answer is Yes, please state who was in charge of that fire department.

A. See above.

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. I do not know.

39. Where was this oil purchased and by whom was it delivered?

A. See above.

40. You have alleged the loss of one dress suit. Where did you buy this suit, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. I purchased this suit from a traveling salesman who came to King Salmon and took orders for tailor-made suits. It is my recollection that I paid \$125.00 for the suit, which included the cost of delivery by air mail to me at King Salmon. It was a gray suit, and I had worn it once or twice.

41. You have alleged the loss of one dozen silk shorts. Where did you buy these shorts, from whom

did you buy them, what did you pay for them, what color were they, how long had you worn them?

A. The dozen silk shorts were purchased for me by my wife at my request, and I do not know where she purchased them or what she paid for them, except I have purchased similar shorts at other times and they run approximately \$1.95 per pair. I had had them a few months to my best recollection.

42. You have alleged the loss of one dozen undershirts. Where did you buy these undershirts, from whom did you buy them, what did you pay for them, how long had you worn them?

A. These undershirts were purchased by my wife, and I do not know from whom she purchased them; but I have purchased similar types and they run approximately \$1.50 each. I had had them approximately 3 to 6 months.

43. You have alleged the loss of four sweat shirts. Where did you buy these sweat shirts, from whom did you buy them, what did you pay for them, how long had you worn them?

A. These sweat shirts were purchased by my wife. I do not know from whom, but I have purchased similar sweat shirts for approximately \$2.00.

44. You have alleged the loss of certain wool work clothes, work coats, work shoes, and overhauls. Please state from whom and the address of whom you purchased these work clothes, furnishing a list thereof. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. The items referred to in Interrogatory No.

44 represented all of my work clothes, except those clothes I was actually wearing the day of the fire; and they consisted of pants, shirts, shoes, overshoes, sweaters, work coats. I do not know where I purchased these items, but purchased them casually, here and there, when needed. Some were purchased at the commissary, some in Anchorage and elsewhere. They were all in good condition and to replace them would cost approximately \$245.41.

45. Please describe the three wool dress shirts that you claim to have lost in the fire. Please give the name and address from whom you purchased each of the shirts. Please give the price paid therefor. Please give the approximate date of the purchase thereof.

A. These three wool dress shirts were purchased from the traveling salesman who came to the camp. They were tailor-made shirts of the finest quality, and I paid approximately \$35.00 each for them, and had worn them several months, and have placed a value on said shirts of \$53.85.

46. You have alleged the loss of one top coat. Where did you buy this coat, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. I purchased the coat from the traveling salesman who came to the camp. This was a tailor-made coat, gray in color. I had worn it on only a few occasions and it was practically new. I paid \$85.00 for it.

47. You have alleged the loss of three pair of dress pants. Where did you buy these dress pants,

what did you pay for them, what color were they, how long had you worn them?

A. I do not recall where these dress pants were purchased. They were slacks of the finest quality, purchased in retail stores, either in Anchorage or in Seattle. They cost approximately \$35.00 a pair, and I had worn them on only a few occasions, when I happened to be in town or in the States.

48. You have alleged the loss of one Val-pack. Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please state the amount you paid for it.

A. As near as I can recall I purchased this Val-pack from a PX and paid approximately \$30.00 for the same. I do not remember which PX. It was practically new.

49. You have alleged the loss of certain luggage. Please give a full description, state where and from whom you bought it and what you paid for it.

A. This was a Samsonite suitcase, large size. My wife purchased this item for me as a gift, and to my best recollection she informed me she paid \$34.50. In addition to the suitcase, I had two seabags, canvas material, worth approximately \$5.00 apiece. I had had these bags for two or three years and they were in good condition.

50. You have alleged the loss of two pairs of dress shoes. Please describe the dress shoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid therefor. Please state the kind and trade name of said shoes.

A. These were Florsheim shoes, one pair purchased at I. Bayles in Anchorage and the other pair in Seattle. They cost approximately \$25.00 a pair. I had had one pair approximately a year and the other pair approximately six months.

51. Please describe the two sweaters that you claim to have lost in the fire. Please give the name and address from whom you purchased each of the sweaters. Please give the price paid therefor. Please give the date or approximate date of the purchase thereof. Please state whether or not they were extensively used prior to the fire.

A. These sweaters were pink and white. They were knitted by my wife and were easily worth \$15.00 apiece. I had had them only a few months and had worn them infrequently. These were dress sweaters.

52. You have alleged the loss of one pair of rubbers. Where did you buy these rubbers, from whom did you buy them, what did you pay for them, how long had you worn them?

A. These were heavy galoshes. I do not recall where I purchased them. I had had them approximately one year, and had worn them infrequently. My best recollection is that I paid \$15.00 for them.

53. You have alleged the loss of one toilet kit and toilet articles. Please give a full description of these articles. From whom did you buy them, how much did you pay for them?

A. This was an expensive toilet kit in a genuine leather container made by Rolf, and was a gift from my wife. I do not know where she purchased the

same, except that she paid in excess of \$30.00 for the set. The toilet articles referred to represent scissors, an electric razor worth approximately \$27.50, which was a Remington, a Gillette safety razor worth approximately \$5.00. These were purchased for me by my wife and I do not know from whom. I had had them a year or two. They were all in good, if not new, condition.

54. You have alleged the loss of one wrist watch. What was the make of this watch? Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation *from you* purchased it, and please state the amount you paid for it.

A. This was a Waltham, 21-jewel wrist watch, and was purchased for me by my wife. I do not know from whom, but it is my best recollection that she paid \$87.50 for the same. I had had it for a few months.

55. You have alleged the loss of one vibrator. Please state the kind of a vibrator it was—the name thereof, from whom you purchased it, and what is the address of the place you purchased it? What date did you purchase it, and what did you pay for it?

A. This was an electric vibrator, purchased at the trading post at King Salmon. I do not know the name. I bought it approximately 1 week before the fire and paid \$17.50 for it.

56. You have alleged the loss of certain dress belts and dress gloves. Please give a full descrip-

tion of these articles. From whom did you buy them, how much did you pay for them?

A. These belts were expensive dress belts worth approximately \$7.50 each. These were probably purchased by my wife, as well as the dress gloves which were purchased by my wife and for which she paid, to my best recollection, \$15.00. I had had the belts approximately a year or two and worn them infrequently, and the gloves I had had approximately a year and worn infrequently.

57. From whom did you purchase the alarm clock referred to in your Complaint? What was the brand name of the clock? What did you pay for it? Was it in working condition at the time of the fire?

A. This was a leather, folding clock, with an alarm attachment, which had been given to me by my wife for use in camp. To my best recollection, the clock cost \$18.00, and I had used it a year or two, and I estimate the present value at \$9.85. It was in good condition.

58. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. We were informed at the time of the fire and during the fire that the stove had exploded. I do not know who said so, but that was the general impression that I had and that all the other men had; and that negligence of the Haskell Plumbing & Heating Company caused the stove to explode I cannot say, except that it was its duty to maintain

the heating stove and, if it had been properly maintained, it would not have exploded.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Tom Mulcahy, within fifteen days from the date of service hereof.

1. Please state your full name.

A. Thomas J. Mulcahy.

2. Please state your complete present address.

A. 329 H. Street, Anchorage, Alaska.

3. Please state your residence address as of the 17th day of May, 1952.

A. Anchorage, Alaska.

4. For whom were you working on the 11th day of October, 1951?

A. Haskell Plumbing & Heating Company, Inc.

5. Where were you living on that date?

A. Haskell Plumbing & Heating Company dormitory at King Salmon, Alaska.

6. How many men were living in the same place at that time?

A. To the best of my belief, 12 men.

7. Please give me an exact list of the names and addresses of the men who were living there at that time.

A. To my best recollection, the men living in the barracks, and the only addresses known to me, were as follows:

Jimmy Weeks—only address known to me was King Salmon, Alaska.

Tommy Judson—only address known to me was King Salmon, Alaska.

Mike Cullinane—only address known to me was King Salmon, Alaska.

Ole Franz—only address known to me was King Salmon, Alaska.

Roy Callaway—only address known to me was King Salmon, Alaska.

Ben Holbrook—only address known to me was King Salmon, Alaska.

Jesse Hobbs—only address known to me was King Salmon, Alaska.

W. Van Smith—only address known to me was King Salmon, Alaska.

Myself, Tom Mulcahy—King Salmon, Alaska.

I do not know the names of the other three men, except that I believe one of them was named Mc-

Laughlin, and the only addresses I know for them was King Salmon, Alaska.

8. Was there a fire that took place on that date?

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. I was setting fixtures in the A. M. Barracks, located approximately 1 mile from the fire.

10. What time of day was it that the fire took place?

A. Approximately 1:15.

11. Do you know the name of any men or women who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. I know of no one who was in the dormitory at that time.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. There was a bull cook, whose name I do not recall, who was responsible for keeping the fire in the heating unit.

13. Where was said man at that time?

A. I have no knowledge of his whereabouts.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. Just an ordinary oil-burning heating unit.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. See previous answer.

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. Approximately 1:30.

19. How did you learn about it?

A. A cement-finisher, whose name I do not know, came by in a truck and told me the barracks were burning, and to gather up the men and come back to the fire.

20. How soon thereafter did you go to the dormitory?

A. Immediately.

21. What did you do after you arrived there?

A. Upon my arrival, the building was almost disintegrated, and the heat was so great that we could not approach the fire.

22. What did you say or hear said at that time?

A. I said nothing that I recall. I heard talk, but cannot distinguish it at this date.

23. How long had you been living in that place?

A. Approximately two months.

24. What was the date of your coming to Alaska during the year 1951?

A. I came to Alaska in April, 1947.

25. How did you come to Alaska?

A. By boat.

26. If you came by plane, please give us the name of the company with whom you rode?

A. See previous answer.

27. Where did you board said plane?

A. See previous answers.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. See previous answers.

29. Do you know who owned the building that you lost your property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc., have with relation to the building that was burned?

A. Haskell Plumbing & Heating Company, Inc., furnished the barracks, assigned us to beds therein, and required that I live there.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing & Heating Company, Inc., furnished the quarters and board as part of our hire agreement.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Everything was furnished by Haskell Plumbing & Heating Company, Inc.

34. What kind of a building was it that was destroyed by fire?

A. Quonset hut.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. No.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. Yes.

37. If your answer is Yes, please state who was in charge of that fire department.

A. Fire equipment was in charge of the U. S. Army.

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. Haskell Plumbing & Heating Company, Inc., to the best of my knowledge.

39. Where was this oil purchased and by whom was it delivered?

A. I have no knowledge of who delivered the oil or from where it was purchased.

40. You have alleged the loss of one suit case. Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it and state the amount you paid for it.

A. This was a brown, leather-like case, bought in a store near Lane Hotel in Anchorage in July, 1951, and I paid \$22.50 for it.

41. You have alleged the loss of one hand bag. Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it and state the amount you paid for it.

A. Black zipper handbag, purchased at army store on C. Street, Anchorage, in May, 1950. Paid \$10.00 for it.

42. You have alleged the loss of one suit. Where did you buy this suit, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. This was a blue suit, purchased from Howard Smart, traveling salesman, at King Salmon, for \$135.00, during September, 1951. Worn twice.

43. You have alleged the loss of one overcoat. Where did you buy this overcoat, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. Black overcoat, purchased at Rutherford's in Anchorage in 1950. Paid \$85.00 for it. Wore it infrequently for two winters.

44. You have alleged the loss of five suits of wool underwear. Where did you buy this underwear, what did you pay for it?

A. This underwear was gray in color and purchased at War Surplus store during summer of 1951. They were new and 9.95 a suit, and had never been worn.

45. You have alleged the loss of five wool work shirts. Please describe each of the shirts, give the

name and address from whom you purchased each and the price thereof. Please give the approximate date of the purchase of each shirt.

A. These wool work shirts were purchased at War Surplus store during summer of 1951, for \$2.50 each. (Used.) O. D. in color.

46. You have alleged the loss of two dress shirts. Please describe each of the shirts, give the name and address from whom you purchased each and the price thereof. Please give the approximate date of the purchase of each shirt.

A. These dress shirts were purchased at Rutherford's for \$5.50 each and were white in color. Bought in 1950, and worn infrequently.

47. You have alleged the loss of a fountain pen. What was the make of this pen? Please give a full description of it, from whom you purchased it, when you purchased it and the price you paid for it.

A. This was a Parker '51 Pen, purchased in 1949 for \$25.00, and used infrequently and was as good as new. Purchased at jewelery store in Anchorage near Rutherford's.

48. You have alleged the loss of a watch. What was the make of this watch? Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. This was a Bulova wrist watch, purchased for \$42.50 in 1951 at jewelery store near Rutherford's.

49. You have alleged the loss of one Winchester. From whom did you purchase it, what is the address of the place you purchased it. What date did you purchase it, what did you pay for it?

A. This was a 20-gauge shotgun, pump, bought by friend making trip to Anchorage and delivered to me at King Salmon. Cost \$85.00.

50. You have alleged the loss of one pair of hip boots. From whom did you purchase them, what did you pay for them, how long had you used them?

A. These boots were bought at Kennedy Hardware in 1947 for \$12.50. They were used infrequently and were as good as new.

51. You have alleged the loss of one pair leather boots. From whom did you purchase them, what did you pay for them, how long had you used them?

A. These leather boots were bought at I. Bayles in summer of 1951 for \$11.00. Wore them at project, they were still in perfect condition.

52. You have alleged the loss of one Parker. From whom did you purchase it, what is the address of the place you purchased it? What did you pay for it?

A. I bought this parka at Army surplus store, new, for \$27.50. It was never worn.

53. You have sued for one pair of dress shoes. Please describe the dress shoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid therefor. Please state the kind and trade name of said shoes.

A. I bought these dress shoes at Hudson's in the summer of 1950, and wore them infrequently, practically new.

54. You have alleged the loss of a vibrator. Please give us a full description of it, from whom did you purchase it, when did you purchase it? Please give the address of the person or corporation from whom you purchased it, and please state the amount you paid for it.

A. I bought this vibrator at Rexall Drug Store in 1950 for \$15.00, and used it a few times. It was nearly new.

55. You have alleged the loss of a Remington razor. Please state from whom you purchased it, and what is the address of the place you purchased it? What date did you purchase it, what did you pay for this razor?

A. This was a Remington electric razor, bought at Anchorage Radio Appliance in 1950 for \$21.50. Used often, but it was in good condition.

56. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. We were furnished living quarters by Haskell Plumbing and Heating Company, with bed, a place to store our personal things, etc.; and it was the defendant's duty to keep said quarters safe; and the barracks burned as the result of an explosion in the heating unit, which heating unit was under the control of the defendant.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Ben Holbrook, within fifteen days from the date of service hereof.

1. Please state your full name.
A. Ben Holbrook.
2. Please state your complete present address.
A. Salyersville, Ky.
3. Please state your residence address as of the 17th day of May, 1952.
A. Haskell Plumbing and Heating Co., Inc., King Salmon, Alaska.
4. For whom were you working on the 11th day of October, 1951?
A. Haskell Plumbing and Heating Co.
5. Where were you living on that date?

A. Above Co. Barracks at King Salmon in Alaska.

6. How many men were living in the same place at that time?

A. 9 Steam Fitters and Plbers. and 2 pipe coverers.

7. Please give me an exact list of the names and addresses of the men who were living there at that time.

A. The eight men Plumbers and Pipefitters and 2 pipe coverers. I have forgotten their addresses.

8. Was there a fire that took place on that date.

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. Working on the job.

10. What time of day was it that the fire took place?

A. Approximately 2 o'clock.

11. Do you know the name of any men or women who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. No. I do not.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. I do not know.

13. Where was said man at that time?

A. Do not know.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. Space heater using fuel oil.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. Not any.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. _____

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. Approximately 2 o'clock in the afternoon.

19. How did you learn about it?

A. Bull Cook reported it.

20. How soon thereafter did you go to the dormitory?

A. Immediately afterwards.

21. What did you do after you arrived there?

A. It was too late to do anything, the building was destroyed and contents.

22. What did you say or hear said at that time?

A. Not anything that I recall.

23. How long had you been living in that place?

A. Approximately 4½ mos.

24. What was the date of your coming to Alaska during the year 1951?

A. May, 1951.

25. How did you come to Alaska?

A. Automobile.

26. If you came by plane, please give us the name of the company with whom you rode.

A. Answered above.

27. Where did you board said plane?

A. Answered above.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. I came by automobile. Arrived in May.

29. Do you know who owned the building that you lost your property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc. have with relation to the building that was burned?

A. It is my opinion that Haskell Heating and Plumbing Co. had contract.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing and Heating. Board and room \$40.25 per week.

33. What was furnished with the quarters? Did you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Utilities were all furnished.

34. What kind of a building was it that was destroyed by fire?

A. Quonsin Hut.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. Yes.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. No.

37. If your answer is Yes, please state who was in charge of that fire department.

A. _____

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. Not sure; I think Haskell Plumbing and Heating Co.

39. Where was this oil purchased and by whom was it delivered?

A. I do not know.

40. You have alleged the loss of an Argus 35 MM. From whom did you purchase it, and what is the address of the place you purchased it? What did you pay for it?

A. I purchased in Anchorage; do not remember name and address. Cost \$58.00.

41. Please describe the fishing equipment that you claim to have lost in the fire. Please give the name and address from whom you purchased it. Please give the price paid therefor.

A. 3 rods and reels, L. G. Carpenter, Salyersville, Ky.; 3 reels and 1 rod, King Salmon, Alaska; tackle box and accessories, Lexington, Ky. Cost \$300.00.

42. From whom did you purchase the Parker pen set referred to in your Complaint? What is the

address of the person or corporation from whom you purchased the pen set? What did you pay for the pen set?

A. Prater Drug Store, Salyersville, Ky. Price \$22.50.

43. You have alleged the loss of one suit case. Where did you buy this suit case, from whom did you buy it, what did you pay for it, how long had you used it?

A. J. O. Arnett, Salyersville, Ky. \$45.00. 51½ mo.

44. You have alleged the loss of one traveling bag. Where did you buy this bag, from whom did you buy it, what did you pay for it, how long had you used it?

A. I do not remember.

45. You have alleged the loss of a shaving kit. Where did you buy this kit, from whom did you buy it, what did you pay for it. how long had you used it?

A. \$16. Do not remember where I purchased it.

45. You have alleged the loss of an electric razor. Please state the kind of a razor it was—the name thereof, from whom you purchased it, and what is the address of the place you purchased it? What date did you purchase it, what did you pay for this electric razor?

A. Purchased in Anchorage (Remington) \$22.50.

46. You have alleged the loss of one pair Russel Boots. Where did you buy these boots, from whom did you buy them, what did you pay for them, how long had you worn them?

A. Burlin, Wisconsin. Price paid \$37.50. Russell Boot Co.

47. You have alleged the loss of one pair of work boots. Where did you buy these boots, from whom did you buy them, what did you pay for them, how long had you worn them?

A. Anchorage. Price \$18.00.

48. You have alleged the loss of one pair of shoe packs. Where did you buy these shoe packs, what did you pay for them, from whom did you buy them, how long had you used them?

A. Anchorage \$14.00.

49. You have sued for two pair of dress shoes. Please describe the dress shoes, state the name and address from whom they were purchased, the approximate date they were purchased. Please state the price you paid for each pair. Please state the kind and trade name of each pair of shoes.

A. Two pair of Florsheim, \$40.50 for two pair; J. O. Arnett, Salyersville, Ky.

50. You have alleged the loss of two suits of clothes. Where did you buy each suit, from whom did you buy it, what did you pay for each suit, what color was each suit, how long had you worn each suit?

A. Lexington, Ky., \$150.00.

51. Please describe the six dress shirts that you claim to have lost in the fire. Please give the name and address from whom you purchased each of the shirts. Please give the price paid therefor. Please give the approximate date of the purchase thereof.

Please state whether or not they were extensively used prior to the fire.

A. 4 new shirts had not been worn. Purchased in Anchorage. Price \$60.00; 2 purchased in Ky., price \$28.00; 2 slightly used.

52. From whom did you purchase the dress socks you alleged were lost in the fire? When did you purchase them and how much did you pay for each pair?

A. All Argile in all wool; price \$3.50 per pair.

53. Please describe the dress jacket you claim to have lost in the fire. Please the name and address from whom you purchased it and the price paid therefor. Please state the approximate date of the purchase thereof.

A. Suede jacket. Price \$75.00. Purchased at Men Store, Anchorage, Alaska.

54. You have alleged the loss of one top coat. Where did you buy this coat, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. Hunting, W. Va.; color tweed; price approx. \$78.00.

55. You have alleged the loss of two pairs of slacks. Where did you buy these slacks, from whom did you buy them, what did you pay for each, what color were they, how long had you worn them?

A. Lexington, Ky. Cost \$32.50.

56. You have alleged the loss of certain underwear and winter underwear. Please give the name and address from whom you purchased it, and the

price paid therefor. Please state the approximate date of the purchase thereof.

A. Do not remember; have many suits and cost. Valued it at approx. \$28.00.

57. You have alleged the loss of certain wool stockings, work gloves and other articles of work clothing. Please state the kind and description of each, state from whom and the address of whom you purchased these articles, furnishing a list thereof. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. Do not remember where purchased and value.

58. Please describe the dress sweater you claim to have lost in the fire. Where did you buy this sweater, from whom did you buy it, what did you pay for it, how long had you worn it?

A. White sweater purchased in Ky. Value \$10.

59. Please describe the films you allege were lost in fire. Please state where and from whom you bought them and what you paid for them.

A. Color films. Value \$40.00.

60. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. No fire watchman and no fire fighting equipment.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by the different Plaintiffs and filed April 2, 1954.]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT AND ANSWERS THERETO

Comes now the defendant Haskell Plumbing and Heating Company, Inc., a Corporation, acting by and through its attorneys, Bell & Sanders, and pursuant to Rule 33, Federal Rules of Civil Procedure, submit the following interrogatories to be answered in writing under oath by one of the plaintiffs, Jesse Hobbs, within fifteen days from the date of service hereof.

1. Please state your full name.

A. My full name is Jesse Abner Hobbs.

2. Please state your complete present address.

A. My complete present address is: 12030 Renton Ave., Seattle 88, Washington.

3. Please state your residence address as of the 17th day of May, 1952.

A. 545 East 12th, Anchorage, Alaska.

4. For whom were you working on the 11th day of October, 1951?

A. Haskell Plumbing and Heating Company, Inc.

5. Where were you living on that date?

A. King Salmon, Alaska, at Barracks provided by Haskell Plumbing and Heating Company, Inc.

6. How many men were living in the same place at that time?

A. Approximately nine or ten.

7. Please give me an exact list of the names and

addresses of the men who were living there at that time.

A. The plaintiffs, above named, were living at King Salmon, Alaska, in said Barracks on the 11th day of October, 1951, but I do not have the present addresses.

8. Was there a fire that took place on that date?

A. Yes.

9. What were you doing on the 11th day of October, 1951?

A. I was working for Haskell Plumbing and Heating Company, Inc. at King Salmon, Alaska, installing plumbing and heating at the Radar Base.

10. What time of day was it that the fire took place?

A. At some time after noon of said date of Oct. 11, 1951. I first saw the fire at approximately 2:00 p.m. of said day.

11. Do you know the name of any men or women who were in the alleged dormitory immediately preceding the explosion referred to in your Complaint?

A. No.

12. What was the man's name and his address, if any, whose duty it was to take care of the stove or heating unit in said dormitory on the said 11th day of October, 1951?

A. I do not know.

13. Where was said man at that time?

A. I do not know.

14. Do you know anything about the kind of a stove or the type of heating unit that was used?

A. I know that there were several oil heaters in the barracks or dormitory but do not know the kind or make.

15. Did you ever have anything to do with the maintenance of said stove or heating unit? If so, state what experience you had along that line.

A. No.

16. Do you know of anyone who saw any explosion in the dormitory on the said 11th day of October, 1951?

A. No.

17. If your answer is Yes, please give us the name and address of the party who saw it.

A. _____

18. When did you first learn of the fact that there was a fire in the dormitory building?

A. At approximately 2:00 p.m. of the day of the fire.

19. How did you learn about it?

A. A truck came out to us at the Radar Base and brought us back to the dormitory or barracks.

20. How soon thereafter did you go to the dormitory?

A. At approximately 2:00 p.m.

21. What did you do after you arrived there?

A. Could do nothing as the building was all in flames.

22. What did you say or hear said at that time?

A. Expressions of regret at losing all belongings.

23. How long had you been living in that place?

A. Approximately three weeks.

24. What was the date of your coming to Alaska during the year 1951?

A. April, 1951.

25. How did you come to Alaska?

A. By plane.

26. If you came by plane, please give us the name of the company with whom you rode?

A. Northwest Air Lines.

27. Where did you board said plane?

A. Seattle-Tacoma Airport, Seattle, Wash.

28. If you didn't come by plane, please state how you did come and the date of your arrival.

A. _____

29. Do you know who owned the building that you lost your property in by reason of the fire mentioned in your suit?

A. No.

30. What connection, if any, did Haskell Plumbing and Heating Company, Inc., have with relation to the building that was burned?

A. All I know of my own knowledge is that the employees of Haskell Plumbing and Heating Company were housed in said building.

31. Did Haskell Plumbing and Heating Company, Inc. own any interest in the building?

A. I do not know.

32. Who furnished you quarters there and what did you pay for the quarters?

A. Haskell Plumbing and Heating Company furnished the quarters as part of the employment contract.

33. What was furnished with the quarters? Did

you have any utilities furnished or did you and the other men occupying the quarters pay for the utilities?

A. Beds, tables, chairs, hot and cold water, showers and toilets were furnished. Also heat. Nothing was paid for utilities, separately, but the same was required to be furnished under the employment contract.

34. What kind of a building was it that was destroyed by fire?

A. Quonset Hut.

35. Did you pay Haskell Plumbing and Heating Company, Inc. anything for living in the building?

A. Not directly. Such quarters were required to be furnished under the terms of the employment contract.

36. Was there a fire department of any kind came to the fire while it was still burning?

A. Not to my knowledge.

37. If your answer is Yes, please state who was in charge of that fire department.

A. ———

38. Who furnished the oil for the heating of the building you referred to in your Complaint?

A. I do not know.

39. Where was this oil purchased and by whom was it delivered?

A. I do not know.

40. You have alleged the loss of one suit case. Where did you buy said suit case, what did you pay for it, how long had you used it?

A. Purchased at Frederick & Nelson, Seattle,

Wash. Paid \$35.00 for same. Purchased in December, 1950.

41. You have alleged the loss of one traveling bag. Where did you buy said bag, from whom did you buy it, what did you pay for it, how long had you used it?

A. Purchased at Frederick & Nelson, Seattle, Wash. Paid \$20.00 for same in December, 1950.

42. You have alleged the loss of one shaving kit. Where did you buy this kit, from whom did you buy it, what did you pay for it, how long had you used it?

A. Purchased at Bon Marche, to best of my knowledge, in Dec. of 1950. I paid \$16.00 for same. Purchased in Seattle, Wash.

43. You have alleged the loss of a Remington Razor. From whom did you purchase it, what is the address of the place you purchased it? What did you pay for this razor and what date did you purchase it?

A. Purchased at Drug Store, Fourth and Seneca, Seattle, Washington, about September, 1950, at a cost of \$22.00.

44. Please describe the slippers you allege were lost in the fire. Where did you buy them, from whom, and what did you pay for them.

A. Purchased at Bon Marche, December, 1950, at a cost of \$7.00.

45. You have sued for three pairs of oxfords. Please describe each of the pairs of oxfords, state the name and address from whom each pair was

purchased, the approximate date they purchased, and the price you paid therefor.

A. Black oxfords purchased at Bon Marche, Seattle, at cost of \$12.00 near Xmas of 1950; one brown pair oxfords purchased at same store at same time at cost of \$12.50; one brown pair oxfords purchased Sept. 1950 at Frederick & Nelson, Seattle, at a cost of \$12.50.

46. You have sued for one pair of work boots. Please state the name and address from whom they were purchased, the approximate date they were purchased, and the price you paid therefor.

A. Purchased at Bon Marche, Seattle, in April, 1951, at a cost of \$18.00.

47. You have sued for the loss of one suit. Where did you buy this suit, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. Purchased at Frederick & Nelson, Seattle, Wash. in Sept. 1950, at a cost of \$80.00, blue.

48. Please state how many dress shirts you had burned in this fire, describe the dress shirts that were burned. Please state the name and address where you purchased said shirts, state the price you paid therefor, and state the length of time you had worn these shirts. Please state the design and color thereof.

A. Three white dress shirts, purchased at Bon Marche, Seattle, at Xmas time, 1950, at a cost of \$30.00.

49. You have sued for certain dress socks. State the name and address from whom they were pur-

chased, the approximate date they were purchased, the price you paid therefor.

A. Socks purchased at Bon Marche and Frederick & Nelson, Seattle, March, 1951, at a cost of \$15.00.

50. You have alleged the loss of one top coat. Where did you buy this coat, from whom did you buy it, what did you pay for it, what color was it, how long had you worn it?

A. Gray Top Coat purchased at Frederick & Nelson, Seattle, in fall of 1950, at a cost of \$50.00.

51. Please describe the dress gloves you allege were lost in the fire, state where and from whom you purchased them, and the price you paid therefor.

A. Two pairs of dress gloves purchased at Bon Marche, Seattle, November, 1950, at a cost of \$15.00.

52. You have alleged the loss of certain winter and summer underwear. Please state from whom you bought them, the price you paid therefor, and if they had been used extensively before the fire.

A. Six pairs of summer underwear purchased at Bon Marche, Seattle, in April, 1951, at a cost of \$18.00; Three pairs of winter underwear purchased at Bon Marche, Seattle, in April, 1951, at a cost of \$36.00.

53. You have alleged the loss of certain wool and light stockings. Please state where and from whom you purchased them and the price paid therefor.

A. Eight pair of heavy wool stockings purchased at Bon Marche, Seattle, in April, 1951, at a cost of

\$16.00; four pair of light wool stockings, purchased same place and time at cost of \$4.00.

54. You allege the loss of certain work clothes including pants, shirts, etc. State the address and name of the person or corporation from whom you purchased these work clothes. Please state the price you paid for each article. Please state the length of time you had owned and used these work clothes.

A. Four pairs of work pants, heavy wool, purchased at Bon Marche in April, 1951, at a cost of \$28.00; six wool work shirts purchased at Frederick & Nelson and Bon Marche in April, 1951, at a cost of \$50.00.

55. Please describe the dress sweater you allege was lost in the fire. State from whom and the address of the person or place you bought said sweater, the price you paid therefor.

A. Dress sweater purchased at Frederick & Nelson, Seattle, in December, 1950, at a cost of \$12.00.

56. State the name and address of the person or corporation from whom you purchased the Stetson hat you allege was lost in the fire and the price you paid therefor.

A. Stetson hat purchased at Bon Marche, October, 1950, at a cost of \$15.00.

57. Please describe the Alpaca jacket that you claim to have lost in the fire. Give the name and address from whom you purchased the jacket, the price paid therefor. Please state whether or not it was extensively used prior to the fire.

A. Alpaca jacket purchased at Army Surplus, Anchorage, Alaska, Sept. 1951, at a cost of \$24.00.

58. You have alleged the loss of one Parker. Please give a full description of said Parker, stating where and from whom you bought it and the price you paid therefor. State the date you bought it.

A. One Parka purchased at Army Surplus, Anchorage, Alaska, Sept. 1951, at a cost of \$35.00.

59. You have alleged the loss of certain miscellaneous items, including belt, suspenders, cigarette lighter, etc. Please give full descriptions of these items, stating from whom and the address of whom you purchased each, and state the approximate date you purchased each. Please give the price you paid for each item.

A. 1 Ronson cigarette lighter, cost \$10.00, Xmas 1950, Bon Marche, Seattle; 2 pairs suspenders, \$4.00, April, 1951, Bon Marche.

1 belt, Xmas 1950, \$5.00, Bon Marche, Seattle; 1 Rosary, \$4.00 Sept. 1950, Catholic Store, Seattle, Sixth Ave.

60. You have alleged the loss of upper and lower partial plates. Please state from whom and the address of whom you purchased said plates.

A. Dr. Clark, Seattle, Wash., Pike St., 1945, cost of \$150.00.

61. You have alleged the loss of fishing equipment. Please give the name and address of the person or corporation from whom you purchased said equipment, the price you paid for each item and the length of time you had used each item.

A. 2 fly rods and one casting rod at a total cost of \$45.00, Ben Paris, Seattle. Purchased Sept. 1950.

Flies—\$15.00; automatic reel, Ben Paris, Seattle, \$18.00, Sept. 1950. One casting reel—\$12.00, Ben Paris, April, 1951.

62. You have alleged the loss of three pairs of coveralls. Where did you buy these coveralls, from whom did you buy them, what did you pay for them, and how long had you worn them?

A. Three pairs coveralls purchased at J. C. Penneys, Seattle, Wash., April, 1951, cost of \$24.00.

63. Please state what negligence the defendant Haskell Plumbing and Heating Company committed by which you claim it liable to respond in damages.

A. I do not have personal knowledge of negligence.

[Printer's Note: The Interrogatories are all signed Bell & Sanders by Bailey E. Bell and filed July 20, 1953. The Answers are signed and verified by Jesse Abner Hobbs and filed March 9, 1954.]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Comes now the Defendant above named and moves the Honorable Court to grant a new trial in the above entitled cause and for grounds of said motion states:

1. That the Court erred in overruling the Defendant's Motion to Dismiss the Plaintiffs' complaint for the reason that it constituted an improper

joinder of parties plaintiff and an improper joinder of causes of action.

2. That the Court erred in overruling the Motion to Dismiss the Plaintiffs' complaint for the reason that the complaint did not state a cause of action in favor of any of the plaintiffs and against the defendant.

3. That the Court erred in refusing to sustain the defendant's separate motions against each and every one of the plaintiffs separately, for the reasons set forth above, all of which motions were made at the commencement of the trial of the case.

4. The Court erred in overruling the defendant's objections to the introduction of any evidence on behalf of the plaintiff, for all of the reasons set forth in the previous motions.

5. The Court erred in allowing over the objections of the defendant to be introduced in evidence, the interrogatories filed out and answered by the various plaintiffs.

6. The Court erred in overruling the plaintiff's Motion to Dismiss the entire case at the close of the plaintiff's evidence.

7. That the Court erred in overruling the Defendant's Motion to strike all testimony as to each and every plaintiff individually which motion was made at the close of the Plaintiff's testimony.

8. The Court erred in allowing to be introduced in evidence the contract marked Plaintiff's Exhibit

Number 1 for the reason the same was incompetent, irrelevant, immaterial and not properly identified and not within the pleadings and issues involved.

9. The Court erred in denying the Plaintiff's motion to strike Exhibit Number 1 at the close of the Plaintiff's case.

10. The Court erred in denying the defendant's Motions made against each individual plaintiff to dismiss each individual complainant for the further reason that there was no proper proof of the measure of damages offered and no competent evidence introduced as to the value of the property lost.

11. The Court erred at the close of the evidence in denying the defendant's Motion to strike all testimony of the plaintiff.

12. The Court erred at the close of the evidence in overruling the defendant's motion to strike the interrogatories introduced over the objections of the defendant.

13. The Court erred at the close of the case in refusing to sustain the defendant's Motion to Dismiss the separate plaintiff's complaints for the reason that the evidence did not justify a Judgment in favor of any one separately or collectively of the plaintiffs.

14. The Court erred in refusing to strike all evidence of property lost as to each separate individual because there was no competent evidence as to the value of the property lost.

15. The Court erred in denying the defendant's Motion to dismiss made at the close of all of the evidence against each plaintiff separately on the theory that there was no negligence proven as against the defendant.

16. The Court erred in rendering Judgment in favor of the Plaintiffs and each of them wherein he held that the bull-cook or the employees of the Gaaslin Company were the agents of the Defendant Haskell Plumbing Company by reason of the written contract introduced as plaintiff's Exhibit Number 1 and held further that the responsibility to furnish food and lodging could not be delegated to Gaaslin Company and further holding that even though the evidence was, that Haskell Company and its employees did not put this gas in the oil; it being the duty of the Haskell Company to see that these premises were safe; and by finding the defendant liable for this damage.

17. The Court further erred in rendering judgment in favor of the various plaintiffs for the amount sued for after a deduction of 30% of the amount claimed as in many instances there was no competent evidence offered and none received on behalf of the various separate plaintiffs and there being no competent evidence as to the extent of loss and there could be no legal reason to support a judgment in favor of each of the plaintiffs for any sum whatsoever.

The defendant moves this Honorable Court to set

aside the judgment rendered and grant a new trial for all of the reasons above stated.

Dated at Anchorage, Alaska, this 12th day of January, 1955.

BELL & SANDERS,
/s/ By BAILEY E. BELL,
Attorney for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed January 13, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on for trial before the Court, sitting without a jury on the 5th day of January, 1955. The plaintiffs, Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, were present together with their attorney, Harold J. Butcher. The plaintiffs, Ben Holbrook and Jesse Hobbs, were not present but were represented by Harold J. Butcher. The defendant was not present in Court but was represented by Bailey E. Bell and trial proceeded thereafter on the 5th, 6th, and 7th, and was concluded on the latter date. Witnesses were sworn and testified and documentary evidence was introduced on behalf of plaintiffs, and thereafter argument was heard and considered; and the Court, having heard the testimony and having considered the

documentary evidence and being fully advised in the premises, rendered its oral opinion on the claims of the several parties and directed that Findings of Fact and Conclusions of Law be prepared and submitted in accordance therewith; and now the Court makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

That counsel for the defendant, on behalf of the defendant, stipulated in open court for purposes of pre-trial Findings of Fact that a fire occurred at King Salmon, Alaska, on October 11, 1951, which fire destroyed the barracks building occupied by the plaintiffs as living quarters.

First Cause of Action

I.

That the plaintiff, Jimmy Weeks, was employed by the Haskell Plumbing and Heating Company, Inc., to perform work at King Salmon, Alaska, in connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in permitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel

oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at page 5 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$434.35.

Second Cause of Action

I.

That the plaintiff, Tommy Judson, was employed by the Haskell Plumbing and Heating Company, Inc., to perform work at King Salmon, Alaska, in

connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in per-

mitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at page 6 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$434.35.

Third Cause of Action

I.

That the plaintiff, Mike Cullinane, was employed by the Haskell Plumbing and Heating Company, Inc., to perform work at King Salmon, Alaska, in connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in permitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at page 7 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$783.65.

Fourth Cause of Action

I.

That the plaintiff, Ole Franz, was employed by the Haskell Plumbing and Heating Company, Inc., to perform work at King Salmon, Alaska, in connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washing-

ton and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in permitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at pages 7-8 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$980.00.

Fifth Cause of Action

I.

That the plaintiff, Roy Callaway, was employed by the Haskell Plumbing and Heating Company, Inc., to perform work at King Salmon, Alaska, in connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the

work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in permitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to

the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at pages 8-9 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$765.46.

Sixth Cause of Action

I.

That the plaintiff, Tom Mulcahy, was employed by the Haskell Plumbing and Heating Company, Inc., to perform work at King Salmon, Alaska, in connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Govern-

ment contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in permitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at page 10 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$366.10.

Seventh Cause of Action

I.

That the plaintiff, Ben Holbrook, was employed by the Haskell Plumbing and Heating Company,

Inc., to perform work at King Salmon, Alaska, in connection with a construction project of the United States Government.

II.

That the defendant named above is a corporation organized under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and was at the time of the incident and injury hereinafter alleged, performing plumbing work in connection with a United States Government contract for construction of military facilities at King Salmon, Alaska.

III.

That under the terms of a written contract of employment the defendant was required to pay the plaintiff a standard wage, and in addition thereto, was required by said written contract to furnish transportation, room and board.

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V

That said explosion and subsequent fire was

IV.

That following the commencement of employment under the terms of the written contract of employment, and while the plaintiff was on duty at the work site approximately one mile from the barracks which the defendant had furnished for plaintiff's housing, said barracks was destroyed by fire, resulting from an explosion occurring in a stove located in the barracks building and used for heating said building.

V.

That said explosion and subsequent fire was caused by the negligence of the defendant in permitting a fuel to be used for heating purposes consisting of a mixture of five gallons of gasoline with each fifty gallons of fuel oil and placed in the fuel barrels from which the fuel was transmitted to the stove.

VI.

That the foregoing mixture of fuel oil and gasoline reduced the flash point of a regular standard fuel to a degree too dangerous for use as a fuel for heating living quarters for workmen.

VII.

That this practice of mixing gasoline and fuel oil was called to the attention of the defendant by the plaintiffs and that the defendant negligently failed to correct the practice and provide a safe fuel for heating said living quarters.

VIII.

That plaintiff, upon being informed that a fire

was destroying the barracks used by plaintiff as living quarters and where he had stored his personal effects and property, went as rapidly as possible to the barracks building, finding upon his arrival that the intensity of the fire was so great that it was impossible to recover any of his personal effects or property.

IX.

That plaintiff lost personal effects and property in said fire through the negligence of the defendant the following items, valued in the following amounts:

[Printer's Note: List of personal effects are not repeated here as they are a duplicate of those set out at pages 12-13 of this printed record.]

X.

That the fair value of said property, allowing a depreciation of 30% is in the sum of \$651.00.

Ninth Cause of Action

No proof being furnished as to the loss sustained by W. Van Smith, and it appearing to the Court that said W. Van Smith is deceased, said cause of action was dismissed.

And, from the foregoing facts, the Court deduces Conclusions of Law as follows:

Conclusions of Law

I.

That the plaintiff, Jimmy Weeks, is entitled to receive the sum of \$434.35 from the defendant,

Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

II.

That the plaintiff, Tommy Judson, is entitled to receive the sum of \$434.35 from the defendant, Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

III.

That the plaintiff, Mike Cullinane, is entitled to receive the sum of \$783.65 from the defendant, Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

IV.

That the plaintiff, Ole Franz, is entitled to receive the sum of \$980.00 from the defendant, Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

V.

That the plaintiff, Roy Callaway, is entitled to receive the sum of \$765.46 from the defendant,

Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

VI.

That the plaintiff, Tom Mulcahy, is entitled to receive the sum of \$366.10 from the defendant, Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

VII.

That the plaintiff, Ben Holbrook, is entitled to receive the sum of \$754.60 from the defendant, Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

VIII.

That the plaintiff, Jesse Hobbs, is entitled to receive the sum of \$651.00 from the defendant, Haskell Plumbing and Heating Company, Inc., to reimburse him for the loss of personal property destroyed in the fire at King Salmon, Alaska, October 11, 1951; and this Court will so order.

IX.

The plaintiffs are entitled to recover their taxable costs, and an attorney's fee of \$750.00.

X.

That judgment be entered accordingly at Anchorage, Third Judicial Division, this 19th day of January, 1955.

/s/ WALTER H. HODGE,
District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed January 19, 1955.

In the District Court for the Territory of Alaska,
Division Number Three at Anchorage

No. A-7736

JIMMY WEEKS, et al., Plaintiffs,

vs.

HASKELL PLUMBING AND HEATING COMPANY, INC., Etc., Defendant.

JUDGMENT

The above entitled cause came on for trial before the Court, sitting without a jury on the 5th day of January, 1955. The plaintiffs, Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, were present together with their attorney, Harold J. Butcher. The plaintiffs, Ben Holbrook and Jesse Hobbs, were not present but were represented by Harold J. Butcher. The defendant was not present in Court but was represented by Bailey E. Bell and trial proceeded there-

after on the 5th, 6th, and 7th, and was concluded on the latter date. Witnesses were sworn and testified and documentary evidence was introduced on behalf of plaintiffs, and thereafter argument was heard and considered; and the Court, having heard the testimony and having considered the documentary evidence and being fully advised in the premises, rendered its oral opinion on the claims of the several parties; and, having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith,

It Is Now Ordered, Adjudged and Decreed as follows:

(1) That the plaintiff, Jimmy Weeks, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$434.35.

(2) That the plaintiff, Tommy Judson, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$434.35.

(3) That the plaintiff, Mike Cullinane, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$783.65.

(4) That the plaintiff, Ole Franz, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$980.00.

(5) That the plaintiff, Roy Callaway, do have and recover from the defendant, Haskell Plumbing and

Heating Company, Inc., by reason of this action against said defendant, the sum of \$765.46.

(6) That the plaintiff, Tom Mulcahy, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$366.10.

(7) That the plaintiff, Ben Holbrook, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$754.60.

(8) That the plaintiff, Jesse Hobbs, do have and recover from the defendant, Haskell Plumbing and Heating Company, Inc., by reason of this action against said defendant, the sum of \$651.00.

It Is Further Ordered, Adjudged and Decreed that the plaintiffs have and recover of and from the defendant, Haskell Plumbing and Heating Company, Inc., their costs and disbursements in this action incurred as shown on the cost bill approved by the Clerk of the Court, and an attorney's fee of \$750.00.

Done at Anchorage, Alaska, this 19th day of January, 1955.

/s/ WALTER H. HODGE,
District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed January 19, 1955.

[Title of District Court and Cause.]

HEARING ON MOTION FOR NEW TRIAL

Now at this time, this cause coming on to be heard before the Honorable Walter H. Hodge, District Judge, the following proceedings were had, to-wit:

Now at this time Hearing on Motion for New Trial in cause No. A-7736, entitled Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, Ben Holbrook, Jesse Hobbs and W. Van Smith, plaintiffs, versus Haskell Plumbing and Heating Company, Inc., a Corporation authorized under the Laws of the State of Washington and doing business in the Territory of Alaska, defendant, came on regularly before the Court, plaintiffs not present but represented by Harold J. Butcher, of their counsel, defendant not present, but represented by Bailey E. Bell, of counsel, the following proceedings were had, to-wit:

Argument of the Court was had by Bailey E. Bell, for and in behalf of the defendant,

Whereupon, the Court having heard the argument of Counsel and being fully and duly advised in the premises, Denied motion for new trial.

Entered: January 21, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, Ben Holbrook, Jesse Hobbs, and their attorney of record, Honorable Harold J. Butcher:

Notice Is Hereby Given, that the Defendant herein, Haskell Plumbing and Heating Company, Inc., a corporation authorized under the laws of the State of Washington and doing business in the Territory of Alaska, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Order and Judgment granting to Jimmy Weeks, Plaintiff, the sum of \$434.35; to Tommy Judson, Plaintiff, the sum of \$434.35; to Mike Cullinane, Plaintiff, the sum of \$783.65; to Ole Franz, Plaintiff, the sum of \$980.00; to Roy Callaway, Plaintiff, the sum of \$765.46; to Tom Mulcahy, Plaintiff, the sum of \$366.10; to Ben Holbrook, Plaintiff, the sum of \$754.60; and to Jesse Hobbs, Plaintiff, the sum of \$651.00; together with an attorney's fee in the sum of \$750.00, and costs of the action; which judgment was rendered on the 19th day of January, 1955.

Dated at Anchorage, Alaska, this 7th day of February, 1955.

BELL & SANDERS,

/s/ By BAILEY E. BELL,

Attorneys for Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed February 7, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Wm. A. Hilton, Clerk of the above entitled Court do hereby certify that pursuant to the provisions of Rule 10, of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above entitled action or proceeding, and including specifically the complete record and file of such action, including the Transcript of Record setting forth all the testimony taken at the trial of the cause and all of the exhibits introduced by the respective parties, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above entitled cause by the above entitled Court on January 19, 1955 to the United States Court of Appeals at San Francisco, California.

[Seal] /s/ WM. A. HILTON,
Clerk of the District Court for the Territory of
Alaska, Third Division.

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of William Cruthers.)

identification, the number is Plaintiffs' Exhibit number one.

The Court: You didn't mean the reporter, Mr. Butcher. The clerk.

Mr. Butcher: No, I meant the clerk.

(Mr. Butcher handed the document to the clerk.)

Clerk: For identification?

Mr. Butcher: For identification.

By Attorney for the Plaintiffs:

Q. What is your name?

A. William Cruthers.

Q. How do you spell your name?

A. C-r-u-t-h-e-r-s.

Q. And what is your occupation?

A. Business manager and secretary-treasurer of the Plumbers and Steamfitters Local 367. The United Association.

Q. And as such business manager, and as such secretary, do you have custody of the official papers, documents and records of the Plumbers and Steamfitters Local? A. I do. [14]

Q. I hand you a document which is marked for identification of Plaintiffs' Exhibit number 1, and ask you to examine it, and after you examined it I will ask you further questions.

(The witness examined a document.)

Q. Do you recognize the document?

A. I do.

Q. Was that document taken from the records and files of the Plumbers Local? A. It was.

(Testimony of William Cruthers.)

Q. And did you personally remove it from those files? A. Yes, sir.

Q. And what is it, if you know?

A. It's a contract between the Haskell Plumbing and Heating Company and Local 367.

Q. Will you state on whose behalf that contract was made?

A. On behalf of our local union.

Q. On behalf of your local union?

A. —and their members.

Q. For what people connected with your industry? A. All of our members.

Q. For all of your members?

A. All of our members.

Q. Were you the business agent and the secretary of the Plumbers Local at the time that contract was made? [15] A. No, sir.

Q. Who was? A. Sam Odle.

Q. Sam Odle. That's all.

The Court: Are you offering the contract at this time?

Mr. Butcher: Did you want to cross-examine?

Mr. Bell: No, I do not care to.

Mr. Butcher: I'll call Mr. Sam Odle.

SAM ODLE

was called as a witness on behalf of the plaintiffs, was duly sworn, and testified as follows:

Direct Examination

By Attorney for the Plaintiffs

Q. Will you state your full name?

(Testimony of Sam Odle.)

A. Sam Odle. O-d-l-e.

Q. What is your occupation, Mr. Odle?

A. Steamfitter.

Q. And were you formerly connected in some official capacity with the Plumbers and Steamfitters Union? A. I was.

Q. And what capacity was that?

A. Business manager and secretary-treasurer.

Q. And during what period were you such business manager—agent—and such secretary-treasurer?

A. From June, 1950 until April 2nd, 1954. [16]

Q. I hand you Plaintiffs' Exhibit marked for identification number 1 and ask you if you recognize the document? A. I do.

Q. And what is it?

A. It is a contract or an agreement between Local 367 and the Haskell Plumbing and Heating Company.

Q. When was that contract made?

A. In August 1950.

Q. And were you a party to that contract as an officer of the Plumbers Local? A. I was.

Q. And as secretary and business agent?

A. That's right.

Q. And does your signature appear on that document? A. It certainly does.

Q. Will you examine the last page and state whose signatures do appear thereon?

Mr. Bell: I object to him testifying to reading what's on the instrument. The instrument is the best evidence——

(Testimony of Sam Odle.)

Mr. Butcher: I'm asking him to identify his signature.

Mr. Bell: —only if he knows.

The Court: I think he may identify his signature and state whether it was signed by any others in his presence. [17]

Q. You may proceed, Mr. Odle. Does your signature appear thereon? A. It does.

Q. That is your signature?

A. It is my signature.

Q. Now, is there another signature thereon?

A. Yes, sir.

Q. And whose signature is that?

A. Haskell.

Q. Did he—Mr. Haskell—F. M. Haskell, is that correct? A. F. M. Haskell.

Q. Did he place that signature on that document in your presence? A. He did.

Q. And that constitutes the official agreement between the Haskell Company——

Mr. Bell: I object to his leading and conjecture.

Mr. Butcher: I withdraw the question.

Q. And will you examine each page of that document now and certify whether that is the complete agreement? If it is?

(The witness checked the document.)

A. This is the complete agreement.

Mr. Butcher: I offer this, Your Honor, as Plaintiffs' [18] Exhibit number one and I will show it to counsel.

(Testimony of Sam Odle.)

(Mr. Butcher handed the document to Mr. Bell.)

Mr. Bell: I object to it as incompetent, irrelevant and immaterial, not within the issues in the case, and prejudicial to the defendant here. The contract on its face shows that it is a contract entered into, known as Pipes—Pipe Trades Agreement between the Plumbing, Heating and Piping Employers of Anchorage, Alaska and the Local 367 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and nowhere in the body of the contract is Haskell Plumbing and Heating Company mentioned, and at the base of it it is not executed according to law; it's not signed by the parties; and purports to be signed by—for the employer by F. M. Haskell Plumbing and Heating Incorporated; F. M. Haskell. And then signed for the Union by Sam Odle. But the purpose of the signatures is nowhere shown in the contract, and it is signed and executed by a party who are not parties to the contract in any way to the contents of the contract; and that F. M. Haskell is not a party to this lawsuit, and therefore this would not be binding on him, and the F. M. Haskell Plumbing and Heating Company, Inc. is not a party to this suit.

The Court: May I see it, please?

(The document was handed to the Court.)

The Court: Thanks. (studies the document)

Mr. Bell: Your Honor——

(Testimony of Sam Odle.)

The Court: Just a moment, Counsel. I gave you plenty of time to examine this and I would ask the same privilege.

Mr. Bell: Your Honor, I meant that you might consider at the same time for the further reason that it is not properly identified. That you might consider along with the others so I won't have to state an extra objection.

The Court: This appears to be, as counsel stated, a contract or agreement between an association of employers—contractors and the association of employees being the Union, which I understand is the common practice; that it is signed for the particular employer, The Haskell Plumbing and Heating Co., by F. M. Haskell. I assume that it will be shown that the Haskell Plumbing and Heating Company is a member or party to the Employers Association; that is the Plumbing, Heating and Piping Employers of Anchorage. And subject to that showing the contract may be admitted in evidence as Plaintiffs' Exhibit 1. It is certainly material.

[see pages 426-443.]

Mr. Bell: Exception.

Mr. Butcher: Mr. Odle, I'll return this document to you. Were you acquainted with F. M. Haskell?

A. I am, yes, sir.

Q. When did you first meet Mr. Haskell?

A. In March 1950.

Q. Under what circumstances?

A. Under—— [20]

(Testimony of Sam Odle.)

Mr. Bell: I object to the testimony concerning matters that are not involved in this lawsuit. Now as far as the signature, he's perfectly—he has a perfect right to testify if he knows it's his signature and so on; but going into the controversies of meeting a man who is not a party to the lawsuit. F. M. Haskell is not a party to the lawsuit, nor neither is the F. M. Haskell Plumbing Company a party to the lawsuit.

The Court: Your objection is overruled.

Q. (By Mr. Butcher, continuing): You may answer.

A. In negotiating between contractors and our Local Union 367.

Q. What contractors do you refer to?

A. The Plumbing and Heating contractors.

Q. And when did this negotiation occur?

A. The negotiation started to take place in March of 1950.

Q. And was there present and participating in that negotiation a man who identified himself as F. M. Haskell?

A. He set in the negotiations in Seattle, Washington, in August of that year; but he was here prior to that.

Q. Was he here at any time during any negotiations that you had with the contractors?

A. He was, but he was not on the committee until we got to Seattle. [21]

Q. Until you got to Seattle? A. Right.

Q. You personally went to Seattle with them?

(Testimony of Sam Odle.)

A. Yes, sir.

Q. And there you met with F. M. Haskell and others in connection with this contract? Is that correct?

A. That's correct.

Q. And did he hold himself out at that time as being the representative of the Haskell Company?

Mr. Bell: I object to that. It's leading and suggestive.

The Court: It is overruled.

Q. ——to meet the objection of counsel?

A. He did.

Q. He did. And he participated in those negotiations——

Mr. Bell: I object to it as leading and suggestive.

The Court: Well, it has already been answered; otherwise it would be leading.

Q. ——and subsequently in the connection with which he had presented himself, he signed this contract?

Mr. Bell: I object to that as leading and suggestive, as giving the witness the answer.

The Court: The question is leading. You may rephrase it, Counsel.

Q. In what capacity, if you know, did he sign it?

A. As owner of Haskell Plumbing and Heating.

Q. And you in your negotiations accepted him as such?

A. That's right.

The Court: Is that all?

Mr. Butcher: No, I have some further questions with reference to the contract.

(Testimony of Sam Odle.)

Q. Now, Mr. Odle, having made a contract with Haskell Plumbing and Heating, were you called upon on behalf of the Haskell Plumbing and Heating at any time to furnish men under the terms of this contract? A. I was.

Q. And when were you requested to furnish men?

A. From time to time during the work that was going on in the Territory.

Q. And by whom?

A. By the representative, or by Mr. Haskell himself.

Q. Did Mr. Haskell on some occasions request men from your Local? A. He did.

Q. Did he do it in person or by writing?

A. In person.

Q. He did it in person. Now, when such a request was made what was your procedure to furnish the men? How did you go about it?

A. We sent them out with dispatch from the Local Office—The Plumbers Union. [23]

Q. Do you have some sort of a form which you use for dispatch purposes?

A. We have a dispatch book with an original and a carbon copy—which we keep the carbon copy.

Q. I hand you a slip of paper and ask you if you can identify it? A. Yes, sir.

Q. Is that a dispatch slip?

A. That's a dispatch—that's a carbon copy of an original.

Q. Will you examine all of these and tell me if

(Testimony of Sam Odle.)

they are regular, official dispatch slips of the Plumbers and Steamfitters Local? (Hands documents to witness.) A. They are.

The Court: Are they taken, Mr. Odle, from your official records? A. Yes, sir.

Q. I would like to ask that these be marked for identification. I would suggest here, Your Honor, that they be marked for identification as a group—as Plaintiffs' Exhibit number 2, but if Your Honor feels they should be marked separately that could be done.

The Court: I certainly concur with that suggestion, Counsel.

Mr. Butcher: Do you have any objection to marking them as a group? (To Mr. Bell.) [24]

Mr. Bell: No, not to marking them as a group.

Mr. Butcher: —containing one-two-three-four-five-six-seven dispatch slips marked for identification as Plaintiffs' Exhibit number 2.

The Court: The seven dispatch slips may be so marked for identification.

(The documents were marked by the Clerk and then returned to counsel.)

Q. I'll hand you Defendants' Exhibit marked for identification number 2 and ask you to look at each dispatch slip and as you look at it state what kind of dispatch, to whom he was dispatched, and the date.

Mr. Bell: I object to it. The document is the best evidence, and it's not in evidence. Therefore he would not be permitted to read.

(Testimony of Sam Odle.)

Mr. Butcher: I'll withdraw the question.

The Court: That's correct.

Q. Will you examine them now and state whether they are official dispatch slips taken from the records of the Plumbers and Steamfitters Local—official records? A. They are.

The Court: I think he already testified to that. You may answer again. A. Yes, they are.

Q. Will you also examine them and see if your signature [25] appears on either part or all of them?

A. It's on part of them.

Q. On part of them. And now will you refer to those on which your signature doesn't appear?

A. Johny Bennett appears on——

Mr. Bell: I object to that, Your Honor. The instruments speak for themselves.

A. ——three.

The Court: Overruled.

Q. And who was Johny Bennett?

A. He was my assistant at that time.

Q. And were these dispatch slips issued under your supervision and by your direction?

A. It was.

Mr. Butcher: Now, Your Honor, in order to make my offer, I need to—although I agree that the dispatch slips speak for themselves—I must identify the dispatch slip with one of the plaintiffs, so that it will be relevant and material, and I am going to hand them back to this witness and ask him to read the names of those persons that were

(Testimony of Sam Odle.)

patch slip for him? A. I did.

Q. And what was the result?

A. I never found it.

Q. But do you know of your own knowledge that he was dispatched? A. I do.

Q. To this job? A. Yes, sir.

Q. That's all. You may cross-examine.

Cross-Examination

By Defense Attorney:

Q. Mr. Odle, are you still connected with the Union, now? A. No.

Q. Are you a journeyman member of it?

A. That's right.

Q. Now, you saw Mr. Haskell, you're sure, F. M. Haskell? A. I'm sure.

Q. And where did you see him?

A. I seen him in Seattle when the agreement was signed. [29]

Q. Did you ever see him anywhere else?

A. Yes, sir.

Q. Where did you see him other than there?

A. I seen him in Anchorage on different occasions.

Q. About how many times did you see him?

A. Oh, approximately four—five.

Q. What age man would you think he was?

A. I would judge Mr. Haskell to be close to—around sixty.

Q. Was he gray-headed? A. Yes, sir.

Q. And how big a man is F. M. Haskell?

(Testimony of Sam Odle.)

A. Well, he's over six foot tall and I imagine he'd weigh better than 200.

Q. And was his hair completely gray or did it have some color in it?

A. It had some color in it.

Q. Was it brown or black would you think originally from the way it appeared?

A. Well I'd take it to be originally more or less a little gray—I mean red.

Q. Red. Now you are quite sure that the Mr. Haskell you met had had red hair and was graying, was it not?

A. He was gray.

Q. Well, you're quite sure it had been red? [30]

A. Well it looked dark to me—a little dark, but I don't know, I couldn't tell from the gray.

Q. Well, now do you remember what color eyes he had?

A. No, sir.

Q. Did you ever actually talk to Mr. Haskell, personally? F. M. Haskell, now, I'm talking about?

A. Yes, sir.

Q. And did you ever talk to him here in Anchorage?

A. Yes, sir.

Q. You are positive of it?

A. Yes, sir.

Q. And how many times do you think you talked to him here in Anchorage?

A. I don't remember.

Q. Now, there's another Haskell, is there not?

A. There is. Yes.

Q. Did you ever talk to him?

A. Yes, sir.

Q. Where did you talk to him?

A. In Anchorage.

(Testimony of Sam Odle.)

Q. And what aged man is he?

A. I'd say he was in his thirties.

Q. And was he a red-headed man?

A. He was.

Q. Now and do you know what his name and initials were?

A. I don't recall his initials. [31]

Q. Do you know whether—what relation F. M. Haskell had to the F. M. Haskell Plumbing Company that you say executed this contract? Do you know what his official capacity was?

A. It's known as Haskell Plumbing and Heating Company.

Q. But it's signed F. M. Haskell Plumbing. Now did—was he an officer of the F. M. Haskell Plumbing and Heating Corporation? That you know of?

A. I would say he was the manager.

Q. Now don't say that you would say he was. Tell us what you know about him. What position he had.

A. I know he represented Haskell Plumbing and Heating as their full representative.

Q. Now you don't know whether he was an officer of the corporation or not? A. No.

Q. And you have no—you don't know whether the corporation authorized him to enter into any contract of this kind or not personally, do you?

A. He said they did.

Q. Now answer the question. Do you know whe-

(Testimony of Sam Odle.)

ther or not the corporation had anything to do with it?

Mr. Butcher: Your Honor, I believe he had answered it.

The Court: He has answered the question to the best of any intelligent witness can answer a question, as to whether [32] he knows the corporate authorization. He can only know what is represented. The objection is sustained.

Q. Do you know the Gaasland Construction Company? Do you know those people or are you acquainted with them? A. No, sir.

Q. Did you have any business relations with them in any way? A. No, sir.

Q. Do you know who the general contractor was on the job over at King Salmon?

A. Gaasland Construction Company.

Q. And you didn't make any agreement then with them in any way? A. No, sir.

Q. Were you ever on the job while it was going on, Mr. Odle? A. Yes, sir.

Q. And where was the job being done?

A. In King Salmon.

Q. What kind of a place—what kind of work was being done?

A. Plumbing and steamfitting.

Q. I know. In what kind of a building. What was it being done to or for?

A. For housing for Army personnel. [33]

Q. In other words resident housing?

A. No, sir.

(Testimony of Sam Odle.)

Q. Well, what kind of housing?

A. A barracks.

Q. It was done on barracks there?

A. Right.

Q. And it was done at King Salmon and not Naknek? A. That's right.

Q. And do you know where the Skytel is there in Naknek? A. I do.

Q. Which direction was it from the Skytel? That you visited?

A. I don't know.

Q. Can you remember, Mr. Odle, how far it was from the Skytel that this work was going on when you were there?

A. I would say two and a half miles.

Q. And do you remember were any of these employees that are plaintiffs in this case, were any of them working there while you were there?

A. There were.

Q. Now which ones?

A. I don't remember.

Q. You are not sure, but you remember some of them were.

A. I remember part of them.

Q. Well, what time did you visit the place?

A. My last trip was the first part of September '51. [34]

Mr. Butcher: If Your Honor please, I am going to object to any further questions along this line. It is getting beyond the scope and away beyond the

(Testimony of Sam Odle.)

scope of direct examination and if he desires to go into this any further with this witness——

The Court: That is correct, Counsel. It is certainly not proper cross-examination. Objection is sustained.

Q. You were business agent at that time?

A. Yes, sir.

Q. Now, did you ever visit the place these men were living?

A. Yes, sir.

Q. And was it during the time they lived at the Skytel or at the——

Mr. Butcher: I object to any further questions along this line.

The Court: The same ruling.

Mr. Bell: Your Honor, I wish to test the memory of this witness by this form of questions, as he has testified to a lot of positive facts, and I'd like to test his memory on these things, and the only way I can do it is this method, if you will permit me to do it.

The Court: I know of no rule of evidence which will permit you. Your cross-examination is limited to either one or two things, the evidence to which he testified or [35] by way of impeachment. The objection is still sustained.

Mr. Butcher: I have no further questions.

The Court: That will be all, Mr. Odle.

* * * * *

ROY CALLAWAY

was then called as a witness in his own behalf, was duly sworn, and testified as follows:

Direct Examination

By Attorney for Plaintiffs:

Q. Will you state your full name to the court?

A. Roy David Callaway. C-a-l-l-a-w-a-y.

Q. Are you the same Roy Callaway that appears as the plaintiff in the lawsuit of Weeks and others against Haskell Plumbing and Heating Company, number A-7736 now before the Court?

A. I am.

Q. What was your last place of occupation, Mr. Callaway? A. Plumber.

Q. How long have you done plumbing? [37]

A. Since 1937.

Q. How long have you been in and around the Anchorage area?

A. Since '47—the spring of '47.

Q. And you are a member of the Plumbers' Local here? A. Yes, sir.

Q. What is the number of that local?

A. 367.

Q. Plumbers' Local 367. A. That's right.

Q. I call your attention to the summer of 1951. Were you employed as a plumber at that time?

A. I was.

Q. Were you operating out of and under the Local 367 at that time? A. Yes, sir.

Q. Were you, at some time during that period, dispatched to Haskell Plumbing and Heating Com-

(Testimony of Roy Callaway.)

pany for work? A. I was.

Q. Will you explain in your own words how you came to go to work for Haskell Plumbing and Heating Company?

A. I got a call from the business agent——

Mr. Bell: I object to any conferences—conversations between he and the business agent.

Mr. Butcher: He was not asked to testify to those conversations, Your Honor. [38]

The Court: That is correct. Your objection is overruled.

A. I was called by the business agent——

Mr. Butcher: No, don't say what the business agent told you, just state that he called you and who else transpired?

A. He gave me a dispatch to King Salmon, Alaska.

Mrr. Butcher: (to clerk): May I have Plaintiffs' Exhibit number 2. (This was given to him.)

Q. Will you examine the part of Plaintiffs' Exhibit number 2 and state whether that is the dispatch slip?

A. Well this is not the original, but it is a copy of it.

Q. It is an exact duplicate of the original?

A. Yes, sir.

Q. Where is the original, if you know?

A. I think it was destroyed by the fire.

Q. When you received the original—what date did you receive the original?

A. October the first, 1951.

(Testimony of Roy Callaway.)

Q. And where did you take that original?

A. I took it to King Salmon, Alaska, and turned it over to the job steward.

Q. Turned it over to the job steward?

A. That's right.

Q. That was your authority was it to go to work? [39]

A. Yes, sir.

Q. Now, while you were still in Anchorage and after you had arranged to take this work by assignment from your Union, how did you get to King Salmon?

A. By plane.

Q. And who furnished the transportation?

A. Haskell Plumbing and Heating.

Q. Were you charged in any way for that transportation?

A. No, sir.

Q. Were you charged in any way for the luggage and baggage you took with you?

A. No, sir.

Q. Did you ever know the cost of transporting you to King Salmon?

A. No, sir.

Q. Upon your arrival in King Salmon, what happened?

A. The job steward met me at the airport and took me over to the camp.

Q. The job steward for who?

A. For Haskell Plumbing and Heating.

Q. Met you at the airport at King Salmon?

A. That's right.

Q. In what manner and by what method did he meet you?

A. Well he just met the plane and took me in

(Testimony of Roy Callaway.)

the truck and hauled me over to the camp where we lived at the barracks. [40]

Q. And when you got to the camp was that the Haskell Plumbing and Heating camp?

A. The barracks that I went to was, yes.

Q. And were you there furnished quarters in the building? A. I was.

Q. Will you state what building it was; describe the building?

A. It was a large Quonset-hut, and we had bedding and everything was furnished. It had shelves up over the bunks to hang our clothes on. And some of them had oh some kind of cabinets that they built themselves or some one had built to store clothes in.

Q. And you—after entering the barracks you located a spot for your bed and where you were going to store your gear.

A. The job steward had arranged that. He had the sheets, the blankets and everything there for me and had the bunk picked out for me because he knew I was coming.

Q. He assigned you to this particular bunk?

A. Yes, sir.

Q. Now after you had been there—after you had gotten there you went to work on the project. Is that correct? A. Yes, sir.

Q. And what kind of work were you doing? [41]

A. Plumbing.

Q. And where were you doing this plumbing work? A. In the Army camp.

(Testimony of Roy Callaway.)

Q. And where was the Army camp as located from your barracks?

A. I would say it was a mile-and-a-half—a mile or a mile-and-a-half from the barracks.

Q. And were you transported out there each day and returned?

A. Each day and returned on company time.

Q. What about your lunch period?

A. At noon—we came in at noon. They brought us in at noon and we'd eat and they took us back after noon.

Q. By "they" who do you mean?

A. Haskell Plumbing and Heating.

Q. I call your attention to a date on or about October 11, did anything unusual happen on that date? A. Yes, there was a fire.

Q. And where was the fire?

A. In the barracks where we lived.

Q. How did you learn about the fire?

A. My foreman come to the job where I was working and said, "Let's go, boys, I just heard our barracks was on fire. Let's get over there and see if we can salvage anything."

Q. And did you in company with your foreman go over there? [42] A. I did.

Q. And what did you see when you got there?

A. The barracks was almost totally destroyed.

Q. Was there any possibility of entering the building? A. None, whatever.

Q. Will you describe the fire, if you can?

A. Well the fire was shooting out of each end of

(Testimony of Roy Callaway.)

the building and out of the roof. And the roof had begun to fall in then.

Q. Now, did you learn what caused the fire?

A. No.

Mr. Bell: Objection. Oh, he's already answered it.

Q. Do you have any idea at all—or did you make any investigation to learn how the fire——

Mr. Bell: Now I object to any idea he might have.

The Court: Well, he corrected that, Counsel. The last question, "Did you make any investigation?"

Mr. Bell: Now that's two questions, then.

The Court: Well, you may answer the last part of the question, Mr. Callaway.

A. (By the witness): Well, there was hardly any way to make an investigation, but the rumor was and——

Mr. Bell: Now I object to rumors.

Mr. Butcher: No rumors. Now, let's go back a step: In addition to the beds you described in the compartments [43] of this building, now was there anything else in the building that was furnished?

A. Yes, there was.

Q. What was it?

A. There was a bathroom and oil stoves for heat.

Q. Oil stoves for heat. And did you have anything to do with these oil stoves? In the way of maintenance or care? A. No, sir.

Q. They were taken care of by someone else?

(Testimony of Roy Callaway.)

A. Someone else, I don't know who.

Q. Who was responsible for furnishing this heat?

Mr. Bell: I object to that statement. If he knows first who is responsible for it.

The Court: Yes. I think that is correct.

A. Haskell Plumbing and Heating.

The Court: That answer will be stricken, Mr. Callaway. You may answer the first—"as to whether you know who was responsible."

Q. Do you know who was responsible for furnishing heat, quarters and—heat and other facilities in these quarters? A. Yes, I do.

Q. Who was that?

A. Haskell Plumbing and Heating.

Q. Was that by virtue of the contract that you had made for you by your Union? [44]

A. It was.

Q. Now, calling your attention to certain properties which you alleged you lost in this fire, will you describe, if you can, first where your property was located in connection with the interior of this building? Can you do that?

A. Most of my clothes, my dress clothes, was hanging up on a rack over my bunk. And part of them was stacked on top of this rack. Part of them was in some seabags I had, and part of them was in my suitcase under the bunk.

Q. In other words, all of the property you had except your clothes on your back which you used in working was in this building? A. It was.

(Testimony of Roy Callaway.)

Q. Now, will you tell the court again what items you lost in that fire and the price—or cost of those items?

A. I can in a roundabout way; it's been sometime——

Mr. Bell: I object to the witness using some papers to testify from.

Mr. Butcher: How do you know he is going to use it?

Mr. Bell: Well, he's got it out in his hand, and I saw him get it out of his pocket, and I suppose he is going to use it.

Q. (By Mr. Butcher): Mr. Callaway, did you make a list of the property that you lost at King Salmon at the request [45] of the Haskell Plumbing and Heating Company? A. I did.

Q. And do you have a copy of that list?

A. I have part of a copy here. This is just the price and the articles that I lost.

Q. Is that an exact copy of the same list that you made at the request of Haskell Plumbing and Heating Company? A. It is.

Q. Will you refer then to that paper and state what you lost and the price?

Mr. Bell: I object to his using the paper unless it is first introduced in evidence, and I've never seen it, I don't know whether it would be admissible or not. It's self-serving, incompetent, irrelevant and immaterial.

The Court: Under the testimony of the witness

(Testimony of Roy Callaway.)

the memorandum or paper may be used by him to refresh his recollection.

Mr. Butcher: You may proceed.

A. (By Mr. Callaway): I lost one dress-suit, price \$125.00.

Q. Where did you get that dress-suit, Mr. Callaway?

A. I ordered it tailor-made from a salesman that come to King Salmon.

Q. What was his name?

A. Howard Smart.

Q. And you paid him cash for it?

A. I did. [46]

Mr. Bell: (interposing) Let him testify——

The Court: Those questions are leading, Counsel.

Mr. Bell: Let him testify. I think he knows what to say.

Mr. Butcher: Well, you are quite right.

Q. (By Mr. Butcher) Is there anything else about the suit you want to say?

A. Nothing, only it was a tailor-made suit. I bought several of them from him before that and since then.

Q. He is a salesman who makes ready-to-measure clothes? A. That's right.

Q. All right, what else did you lose?

A. I lost a dozen silk shorts. They were nylon shorts but it might be written down silk. But they was nylon shorts.

Q. And what was the price of those shorts?

(Testimony of Roy Callaway.)

A. About around \$2.00 a pair—\$1.95 or \$2.00 a pair.

Q. Did you buy these particular shorts?

A. No, my wife bought them for me.

Q. Have you bought similar shorts?

A. I have.

Q. And that's the price you paid? For that particular kind? A. That's right.

Q. And were they of the quality that you usually wear? A. Yes. [47]

Q. Now what else did you lose?

A. I lost a dozen undershirts.

Q. Do you know the price of those undershirts?

A. About a dollar and a half a piece.

Q. And did you buy those yourself?

A. No, sir, my wife bought those for me.

Q. And had you bought others of a similar type? A. Yes, sir.

Q. And is that the price you usually paid?

A. Just about. Around that.

Q. And these were of the same quality you usually bought? A. Yes, sir.

Q. Did you lose anything else?

A. I lost four sweatshirts.

Q. Will you describe the approximate cost of those, if you know?

A. About \$2.00 for each.

Q. What else?

A. Two pair of woolen underwear.

Q. And what price were those underwear?

A. About \$7.00 a pair or \$7.50.

(Testimony of Roy Callaway.)

Q. Anything else?

A. Four pair of wool work pants.

Q. At what price?

A. About \$8.00 a pair. Maybe \$9.00. I don't know [48] exactly, but I've priced them since then and I've bought them since then and before that, and it's around \$8.00 a pair.

Q. All right, anything else on your list?

A. Nine wool work shirts.

Q. Will you indicate the quality and type and approximate price of those shirts?

A. Black-Bear. I bought most of them, I think, right here in town, and they run around \$9.50 to \$10.00 each.

Q. Will you indicate whether there was anything else on your list that you lost?

A. Three wool dress shirts—gabardine—wool gabardine—dress shirts—tailor-made.

Q. And what was the price of those?

A. About \$35.00 each. \$35.00 each. They were also tailor-made from this same Howard Smart.

Q. What about the suits, now? Acquired at the same time you bought the suits? A. Yes, sir.

Q. All right, now what else did you lose?

A. I lost a top coat—a tailor-made top coat—wool gabardine. \$85.00 was the price of that.

Q. Did you buy that personally?

A. I bought it from Howard Smart, yes, sir.

Q. All right, what else did you lose? [49]

A. Two wool sweaters, knitted by my wife and you couldn't—I value them at about \$15.00 each.

(Testimony of Roy Callaway.)

Mr. Bell: I object to any testimony about the wool sweaters. They don't seem to be sued for here.

Q. (By Mr. Butcher): Are they mentioned on your list? A. Yes, sir.

The Court: Yes, if you look at the second page—

Mr. Bell: Oh, it's over on the next page. I didn't see them. All right, go ahead.

The Court: Just a moment. Would you open the window back there, Mr. Johnson? It seems awfully hot.

Q. With reference to the sweaters. Now, your wife made these herself for you, didn't she?

A. Yes, sir.

Q. And you priced them at \$15.00 a piece, considering the work and material that went into them? A. That's right.

Q. And you believe that's a fair value?

A. I do.

Mr. Bell: Now, I object to leading the witness.

Mr. Butcher: Well, Your Honor, I am not leading him. He has said that that was his valuation.

The Court: Even repetitious questions may sometimes be leading. I would try to avoid that, Counsel.

Q. Now, what's the next item? [50]

A. I had a shaving kit. It was a Ross. Leather shaving kit. My wife bought it for me as a present, and she told me that she paid——

Mr. Bell: I object to what she told him.

A. ——\$30.00 for it.

Mr. Bell: I object to that answer——

Mr. Butcher: Now, just a minute. Don't say

(Testimony of Roy Callaway.)

what your wife told you she paid for it, but if you know what your wife paid for it, you can say so.

The Court: That is correct.

Mr. Bell: I'll go then by what she told him——

A. She paid \$30.00 for it.

Mr. Bell: I move to strike the answer. He hasn't yet qualified to show that——

The Court: It is not responsive, Mr. Callaway. Strictly speaking, you should first state whether you know.

A. All I know, Your Honor, is what she told me she paid for it.

The Court: Well then the answer may be stricken. You may place your own estimate of value on it.

A. Well my estimate is \$31.00.

Q. (By Mr. Butcher): You are acquainted with the type of the material and the quality of the product? A. Yes, sir.

Q. Have you ever independently priced items of a similar nature? [51]

A. Yes, sir, I have one now just like it.

Q. And what was the price of that?

A. \$31.00.

Mr. Bell: I object to the answer to that because that would not be controlling.

The Court: That would be certainly material. Fixing his own appraisal as to what he pays for the same article now; except for a difference of two years which would not make a great deal of difference.

(Testimony of Roy Callaway.)

A. The toilet articles which was scissors and everything that you use I valued at \$45.00.

Q. All right, what else did you lose in this fire?

A. A Waltham wristwatch—21 jewel—Waltham wristwatch—\$87.00.

Q. And what else did you lose?

A. A vibrator—with several attachments—price \$17.50. I bought it at King Salmon, at the Skytel—at the Post there, myself.

Q. What is the next item?

A. Two work coats.

Q. What type of work coats were they?

A. They was—well, I don't know. Just ordinary—I can't pronounce what kind of material that's inside of them. Those—— [52]

Q. What are they heavy——?

A. Heavy work coats. About \$26.00 a piece. Or \$26.50, something like that.

Q. And what else do you have in your list?

A. Three pair of dress pants—slacks. Valued at \$30.00 each—or around that.

Q. Why do you say around that?

A. Well, that was the price I paid for them.

Q. What else do you have on your list?

A. One valve pack.

Q. What is a valve pack?

A. It's a type of a suitcase. This was leather that you unfold, lay suits in and you can fold it up, and it has pockets on the sides that you can put underclothes and stuff like that. Loose gear in each side of it. Value \$30.00.

(Testimony of Roy Callaway.)

Q. What else do you have on your list?

A. I have one Samsonite large suitcase—\$34.50.
That is what I paid for that.

Q. What else do you have?

A. Two seabags—\$5.00 each.

Q. Describe the seabags.

A. A seabag is—it's just a regular GI seabag that stands up, oh, about 3½ foot high, and will hold approximately around 100 lb. of loose clothes.

Q. What else did you have? In the way of personal property?

A. Two dozen wool work socks.

Q. Are you able to put a price on the work socks?

A. \$38.00 for the two dozen.

Q. And what else?

A. One dozen dress socks. \$16.00.

Q. What other items did you have?

A. Two pair of dress shoes—Florsheim. I bought one pair of Bayliss' here in town—and one pair in Seattle. Valued \$25.00 a pair.

Q. Anything else?

A. Two pair of work shoes. The two pair valued \$35.00.

Q. Two pair together valued at \$35.00?

A. Yes.

Q. In other words, you valued them at \$17.50 a piece? A. Yes. That's right.

Q. What else did you lose?

A. Two dress belts—\$7.50 each.

Q. They were leather belts? A. Yes, sir.

(Testimony of Roy Callaway.)

Q. All right, did you have anything else?

A. Three pairs of overalls—total \$17.00—\$17.37.

Q. Were those the type ordinarily worn by plumbers?

A. Yes, sir.

Q. All right, anything else? [54]

A. Two pair of dress gloves. \$15.75.

Q. And any other items?

A. Eight pair of work gloves valued at \$6.00.

Q. Any other items?

A. One alarm clock. Valued \$9.85.

Q. Now, have you totalled the amount of these losses as you have evaluated them?

A. No, I haven't here, but I think it is on one of those sheets, maybe. I don't know.

Q. Now, immediately following this fire, what happened if anything that you can recall?

A. You mean right after the fire—we rushed over and stood and watched it burn.

Q. And did you continue your employment or come back to Anchorage?

A. We came back to Anchorage part of us and one or two of the guys stayed. I came back to Anchorage.

Q. And you didn't return to King Salmon at any time thereafter?

A. No, sir.

Q. Do you know, of your own knowledge, from personal observation what type of heating apparatus was in this building?

A. Yes, there was oil stoves; just ordinarily plain oil stoves. [55]

Q. What fuel was used in them, if you know?

(Testimony of Roy Callaway.)

A. Fuel oil.

Q. Was that fuel oil stored in the building or outside? A. Outside of the building.

Q. And they were connected up to the heating stove by some mechanical contrivance?

A. Yes, sir. It was tubing—copper tubing—run inside and along the floor to the stove.

Q. And the heat was furnished in that way?

A. Yes, sir.

Mr. Butcher: I think that's all.

The Court: You may cross-examine.

Cross-Examination

By Defense Attorney:

Q. Where do you live, Mr. Callaway?

A. Now?

Q. No, where did you live then?

A. Well what do you mean by "then"?

Q. Well, at the time you went to work over there? A. I lived in Anchorage.

Q. Here in Anchorage. Then you have lived here since '47, I believe you stated?

A. Yes, sir.

Q. Do you have a family? A. Yes, sir.

Q. And they were living in Anchorage while you were over there?

A. Sometimes. Sometimes they was Outside.

Q. When you went over there—what date did you say you went over?

A. October the first, 1951.

Q. When was this fire, then?

(Testimony of Roy Callaway.)

A. The 11th of October, 1951.

Q. What airlines did you go over on?

Q. PNA I think. I am not positive.

Q. Did you take your baggage—luggage along with you went you went over?

A. Yes, sir.

Q. Did you have to pay any excess baggage at that time? A. No, sir.

Q. What amount of baggage were you allowed to take free? A. All we had.

Q. And was that all you took, just within the limits of what——?

A. Took everything we had—or I did.

Q. Well, they allowed you to take a certain amount, didn't they—60 lbs. or 48—or something like that.

A. The contractor always paid whatever baggage we had.

Q. But you didn't take enough to make excess baggage, did you? [57]

Mr. Butcher: Well, now, Your Honor, I object to that question, that is, my client will know what he means by "excess baggage."—"taking enough to make excess baggage."

The Court: Well, perhaps he knows what excess baggage means.

Mr. Bell: Do you know what excess baggage means?

A. I didn't in that case, No, because we was never questioned with excess baggage.

Mr. Bell: But you do know what "excess bag-

(Testimony of Roy Callaway.)

gage" means, don't you? A. Not on bush jobs.

Q. Well, now you know whether—you know the meaning of the words, "excess baggage," don't you? A. Yes.

Q. Well, now then, getting down to it then. Was there anything said about you having excess baggage on going over that day?

Mr. Butcher: He testified that he did have excess baggage.

Mr. Bell: No. Please!

The Court: I think that is proper cross-examination.

A. I don't remember.

Q. Now, if you had taken more than the airline company allowed you to take—each passenger—would that have been called to your attention? [58]

Mr. Butcher: Your Honor, before he answers this question, there has been no evidence here to go into in any way. Now, Mr. Bell said if you had taken more than the airline permitted. If you had taken more. Now, there is no testimony that they had any restrictions of any kind.

The Court: Well now, Counsel, the materiality of it is not for discussion. He was asked concerning the transportation to King Salmon, and therefore cross-examination on that point is permissible.

Mr. Butcher: I agree with you, Your Honor, but he has been asked if there was any restriction placed on it and he said no there wasn't, he took all he wanted to take and there was no charge of any kind.

(Testimony of Roy Callaway.)

The Court: That's the way I understood it, but it counsel wishes to pursue this further, I don't see that he should be limited yet.

Q. (By defense attorney): Do you know about how many pounds of baggage you took with you?

A. I don't remember. No.

Q. How many suit-cases did you take with you?

A. I had a large suit-case; I had a valve-pack and two seabags.

Q. And when you went over, did you intend to spend a year on such matters there, or were you going for a short trip? [59]

A. I went over to complete the job.

Q. And you stayed until it was completed, did you?

A. No. The barracks burned down.

Q. Well, the other men did stay, didn't they, some of them?

A. One or two of them stayed.

Q. Now, do you remember when you left here where you were living at the time you left Anchorage?

A. I was probably living in a hotel. I don't remember what hotel, but my address was the Local, Local 367. We got our mail there.

Q. Well, on October first, 1951, you said you were living in Anchorage, now can't you tell us where you were living at that time?

A. My wife had moved out on the Post, and I was living in town. I don't know what hotel. I don't remember.

(Testimony of Roy Callaway.)

Q. Did the children move out with the wife, too?

A. We didn't have no children.

Mr. Butcher: There has been no such testimony.

Mr. Bell: Oh, I'm sorry. I misunderstood him.

Q. (By defense attorney): Then you can't tell the Court—or can't remember where you were living then when you left here to go to King Salmon?

A. No, sir.

Q. Now, when was it that you made the list that you [60] spoke of in answer to Mr. Butcher's question? When was it you made that list?

A. After I come back to town.

Q. Was that before this suit was filed?

A. Yes.

Q. Did you make a list for Mr. Butcher for the purpose of filing suit?

A. A list was made. We come back to town and a list was made by the orders of our executive board—our organization.

Q. From your Union? A. Yes, sir.

Q. And that's who ordered the list to be made?

A. The reason I would say they ordered it; we come into town, they wanted to know why we left the job. We had to explain why we had no clothes or anything to work with. So they says to make out a list of everything you lost which we had orders from Haskell before we left King Salmon to do that. And I made my list out after I got to town.

Q. Now, when did you buy this dress suit from

(Testimony of Roy Callaway.)

Mr. Smart? A. The fall of 1950.

Q. And you hadn't worn it, did you?

A. I wore it a few times, one or two times.

Q. While now in going out into the brush, on a brush job did you think it best judgment to take your Sunday suit—your best suit with you? [61]

A. I always do.

Q. You always take that even on brush jobs?

A. Yes, sir.

Q. Now, you had been wearing that then about a year when the fire happened?

A. I had owned it about a year.

Q. You owned it a year. And you paid \$125.00 for it? A. Yes, sir.

Q. And if you were trying to dispose of it, you couldn't have gotten hardly anything for it—a second-hand suit, could you?

A. The suit was worth just as much to me as a new one would be.

Q. Well, but it wouldn't have brought that on the market, would it?

A. I don't know what it would have brought.

Q. Well, you wouldn't think that it would bring over \$50.00 on the market, would you? A used suit?

Mr. Butcher: Now, Your Honor, he has said that he didn't know what it would bring on the market, and he's asking him now what it would—

The Court: It is still proper cross-examination.

Q. (By defense attorney): You don't know what it would be worth on the market—reasonably worth?

(Testimony of Roy Callaway.)

A. I just know what it would cost me to replace it. [62]

Mr. Butcher: Your Honor, the question is repetitious.

The Court: It has been answered. A certain amount of repetition is permissible in cross-examination—according to my understanding.

Q. (By defense attorney): Now did you wear silk shorts out on this work? A. Yes, sir.

Q. You wore them all the time on the work?

A. I wear them all the time.

Q. And where did you buy those silk shorts?

A. My wife bought them for me.

Q. Where did she buy them?

A. That I don't know.

Q. And you don't know what she paid?

A. No, sir.

Q. Now then, you had a dozen undershirts there, where did you buy those?

A. She bought those for me also.

Q. And you don't know where she bought them?

A. No, sir.

Q. And you don't know what she paid for them?

A. I just know what similar ones cost me, since then.

Q. How long had you had those?

A. I don't remember exactly. But a few months, maybe.

Q. And had you had the silk shorts about the same length of time? [63]

A. The same length of time, yes, about.

(Testimony of Roy Callaway.)

Q. Well, would you say you bought them in the winter or in the spring—or got them about the spring?

A. Well, I'd say it would be in the fall—shortly before I went out to King Salmon.

Q. And you bought a dozen pair at once, did you?

A. She bought them, I didn't.

Q. She bought you a dozen pair at once?

A. Yes, sir.

Q. Now, where did you get these sweat-shirts?

A. She bought those for me, also.

Q. And where did she buy them?

A. I don't know.

Q. And you don't know what she paid for them?

A. I just know what the similar sweat-shirts cost me, since then.

Q. Did you work in those sweat-shirts?

A. Yes, sir.

Q. And had you worked in these that you had there? That burned up?

A. I don't remember. I probably had at one time or the other.

Q. You were wearing some clothes the day the fire happened? [64]

A. Yes, sir.

Q. Now, you had four sweat-shirts that you were carrying with you. Did you have one on at the day of the fire?

A. No, sir.

Q. What did you have on? What were you wearing in the way of clothes that day?

A. I was wearing a pair of low-cut shoes; a pair

(Testimony of Roy Callaway.)

of wool pants; a wool shirt; a pair of overalls; and a GI jacket.

Q. They, of course, were not destroyed by the fire? A. No, sir.

Q. Now, did you wear wool underwear all the time? Over there?

A. If we was working outside, we did; if we happened to be in a building, why we didn't wear them. If we knew we was going to be in a building that day where it was heat, we didn't wear them. No, because it was too hot to wear them.

Q. Where did you buy this wool underwear?

A. I don't know that—just a minute, maybe I do. I think I bought them right here at the Surplus Store on Fourth Avenue.

Q. Army Surplus? A. Yes, sir.

Q. And don't you think that \$7.50 for a pair is really more than you would have to pay for that?

A. That's what they cost. [65]

Q. And you don't remember where you bought them, but you know they cost \$7.50? A. I do.

Q. Did you buy them personally?

A. I bought them.

Q. When did you buy them?

A. Just before I went to King Salmon.

Q. The day before? Do you think?

A. No, maybe not the day before.

Q. Now, how many pair of workpants did you have with you over there on this job?

A. I'll have to check here.

(Testimony of Roy Callaway.)

Q. You're just testifying then to this list that you have in your hand, not from memory?

A. Naturally. It's been over two years ago when I made out the first list, and this was made out—this was a list just like that. So I can't very well remember when a list was made two years ago.

Q. Is that a typewritten list? A. Yes, it is.

Q. And who made that particular list up for you?

A. Mr. Butcher's secretary at my request.

Q. And that was made out of a copy of the claim in your suit?

A. Out of the original list that I made. [66]

Q. It is the same as set forth in your complaint, is it not? The same thing in your suit?

A. Yes.

Q. Now when did she make that out for you?

A. She made this out last—she made this out yesterday—or today, I don't know, I asked her for it yesterday.

Q. So you don't have any independent recollection of the stuff you lost other than by refreshing your memory from that list?

A. I have certain things here that I can remember, but I can't remember each and every article in the amount that I had.

Q. Now you had nine wool shirts that you paid \$9.50 to \$10.00 a piece for—work shirts—

The Court: May I interrupt a moment, Counsel. The Court is a bit confused here, Mr. Callaway. I understood you to say that you made up this list

(Testimony of Roy Callaway.)

after you came back to town from the job. Now I understand you to say that the list you are testifying from was made only yesterday in Mr. Butcher's office?

Mr. Callaway: Your Honor, I made the original list out of the stuff that I lost when we first came to town and I asked for this list—Mr. Butcher's secretary to make this list for me—of my original list that I had turned over to them so that I would have something to refresh my [67] memory on because I couldn't remember each and every article——

The Court: The original list you made had been turned over to Mr. Butcher's office?

Mr. Callaway: Yes, sir.

The Court: So what you asked them to do was to give you a copy of that original list?

Mr. Callaway: Yes, sir.

The Court: And that's what you have here?

Mr. Callaway: Yes, sir.

The Court: That is clear.

Mr. Bell: Now, Your Honor, I demand that the original list be produced, if he is going to testify——

The Court: Well, he may show a—yes, you should state then what became of the original list. Do you know?

Mr. Callaway: No, sir.

Mr. Butcher: Who did you turn it over to, Mr. Callaway?

Mr. Callaway: I turned it over to my business agent, and he in turn took care of it from there.

(Testimony of Roy Callaway.)

Mr. Bell: Now wait, Mr. Butcher, I'm not done with him yet.

Mr. Butcher: I know you are not done with him and I——

Mr. Bell: And I don't mean to be interrupted when I am cross-examining the witness.

Mr. Butcher: ——but you have now demanded the Court [68] to have this paper disregarded and I have a right to be heard on it.

The Court: Do you wish to question the witness further, first on it?

Mr. Butcher: Yes—No, I want to inform the Court, first. I asked this witness if this was an exact copy of the list that he made at the request of Haskell Plumbing and Heating Company when the fire occurred—immediately after. And he said that it was an exact copy. He is using it only where he needs to refresh his memory, and that is quite proper.

The Court: Yes.

Q. Now, did you see that original list any more after you gave it to the business agent?

A. I don't remember whether I did or not.

Q. Well, did you ever see it in Mr. Butcher's office?

A. I don't think so. Not the original. Maybe I did. I wouldn't say one way or the other.

Q. Did you make that original out in pencil or pen—or typewriter?

A. All of us fellows that come in from King Salmon made the list. It was presented to the girl

(Testimony of Roy Callaway.)

in our office, our secretary, and she typed—retyped it out of lists; typed it out for us.

Q. Did you see it now after she typed it?

A. Yes, sir.

Q. Now where is that list? [69]

A. I don't know.

Q. Well, don't you know anything about the list only the one that Mr. Butcher's secretary gave you yesterday or today?

A. I just merely asked for a copy of the original list that I made out—the prices and the articles that I had lost—that I presented to them.

Q. And you didn't see her make it out?

A. No, sir.

Q. And you don't know whether that is a copy of your original list or not? Only from memory?

A. Naturally that——

Q. And you don't know where the original list is?

A. No, sir.

Mr. Bell: Well, I certainly object to him using this list then——

Mr. Callaway: Mr. Butcher may have it, I don't know.

Mr. Bell: This is all his evidence on this. I move to strike it—for the reason that this is purely a self-serving declaration. A statement made out to testify from yesterday or today, and he doesn't know what become of the original list; he doesn't know whether this is the exact copy of it or not. It couldn't possibly——

The Court: The Court is satisfied from the ques-

(Testimony of Roy Callaway.)

tions asked and answers given by the witness that the copy has been sufficiently shown to be a copy of the original list [70] such that he may use it to refresh his recollection. Not as an exhibit but for that purpose only. And the motion to strike will therefore be denied. It is for that very reason that I asked the question and I think it has been satisfactorily explained.

Mr. Bell: Well, I would ask counsel for plaintiffs to produce the original, then, at this time that I might see it.

Mr. Butcher: If Your Honor please, I don't have it. I have been informed by the business agent that the original list was prepared at the request of the Haskell Plumbing and Heating and was submitted to their insurance company and apparently the insurance company still has it.

The Court: That is your information?

Mr. Butcher: Yes, Your Honor.

The Court: That is, you cannot produce it?

Mr. Butcher: I cannot, sir.

Mr. Bell: I want to renew my motion to strike all the testimony from that document given by examination——

The Court: Well, we have ruled upon that and I see no reason to change the ruling.

Mr. Bell: All right. In other words I just want to save my record on that—that Mr. Butcher has explained it.

The Court: Very well.

Q. (By defense attorney): Now where did you

(Testimony of Roy Callaway.)

get the wool [71] work shirts. Who did you get those from?

A. Well, I bought part of them right here in Anchorage—at the—I can't think of the store—it's on Fourth Avenue—just this side of the—just this side of the Panhandle—that drygoods store right on the corner. I don't remember the name of it.

Q. Well, how many wool work shirts did you have?

(The witness looks at list.)

Mr. Bell: Do you have to examine that list every time to answer every question?

(No response. Witness continues to examine paper which he holds.)

Mr. Bell: Would you please answer the question?

A. Nine. Pardon me, sir, but you mentioned nine and I just didn't know whether I mentioned nine before or not. That's the reason I checked this.

Q. And you didn't remember individually of your own memory at all then?

A. Not over two years, no, sir.

Q. Now you don't know where you got only a part of them, you say?

A. A part of them, I picked them up here and there, but I am sure that they were all Black Bears, because I wear them all the time.

Q. Now how long had you had some of these shirts, for instance? [72]

(Testimony of Roy Callaway.)

A. Some of them several months. Some of them not that long. I don't remember.

Q. Some of the good ones would last a couple of years, wouldn't they? A. Yes.

Q. And you had some of them you think as much as two years? A. Possibly, yes.

Q. And you had some less time than that?

A. Yes, sir.

Q. And you think you gave \$9.50 or \$10.00 a piece for those shirts? A. That's what—yes.

Q. I see. Now and you had some dress shirts—some wool dress shirts—do you have to look at that list every time you answer a question; can't you remember a thing about this stuff?

A. (No response.)

Q. Can't you? Mr. Callaway? Do you have to examine that list to answer each question?

A. (No response.)

Q. Please answer the question.

A. Part of it, yes. I want to look at this list every time I answer one. Is that all right?

Q. Well, why do you have to look at that every time you answer a question? [73]

Mr. Butcher: If Your Honor please, I don't think this witness ought to be badgered by his right to look at a list of personal items which he lost more than two years ago. The Court has ruled that he has a right to look at it and when he does look at it why should he be badgered by Counsel for looking at it?

The Court: I feel that the questioning is rather

(Testimony of Roy Callaway.)

oppressive. I am certain Counsel, I could not remember how much I paid for a shirt two years ago unless I refreshed my recollection somehow. I doubt if Counsel could. I think it is quite proper that a witness be permitted to refresh his recollection from a list made shortly following the fire, and that he should not be oppressed with further questions along that line. He should be protected in that respect.

Mr. Bell: Exception.

Q. (By Mr. Bell): You don't know where you got those dress shirts?

A. Yes, sir, I know where I got them.

Q. Where did you get those?

A. I got them from the salesman, Howard Smart.

Q. And when did you get those?

A. In '50. The fall of '50.

Q. About one year prior to that time?

A. Just about, yes. [74]

Q. And then you had been wearing them occasionally for a year? A. Yes, sir.

Q. Now this top coat, what kind of a coat was that?

A. It was a wool gabardine—tailor-made—same as the shirt.

Q. And who did you get it from?

A. Howard Smart.

Q. And when did you get it?

A. The same time as I got the shirts and the suit.

(Testimony of Roy Callaway.)

Q. A year before? A. Yes, sir.

Q. And you say you paid \$85.00 for that?

A. Yes, sir.

Q. Don't you think it was worth considerably less one year later?

A. It was worth just as much to me a year later as it was the day I bought it, because I had worn it very little and it was practically new, and I had to replace it.

Q. You didn't have any other top coat?

A. No, sir, not with me.

Q. Well, where did you have any other top coats?

A. The one I had was down in the States.

Q. I see. Now you had some work coats, I believe two work coats, did you not?

A. Yes, sir. [75]

Q. Where did you get those?

A. I don't remember.

Q. Were they Army Surplus? A. No, sir.

Q. And what kind of coats were they?

A. Oh, they was just ordinary work coats. Some kind of lining inside of them. I don't know whether they was down or what they was. They cost about \$25.00 a piece.

Q. And when did you buy those?

A. I don't remember correctly but within—within two years anyway.

Q. Within two years of the time of the fire.

A. Yes, within two years of the time they were destroyed.

(Testimony of Roy Callaway.)

Q. And you paid \$25.00 a piece for them?

A. Something close to that. I don't remember correctly but it was around \$25.00 or \$26.00. I've priced them since then and that's about what they run.

Q. But you had worn those a couple of years, do you think?

A. Well, I wouldn't say two years. I'd worn them for at least a year, maybe.

Q. I see. Now, you had three dress pants. What kind of pants were those?

A. They were just good gabardine slacks.

Q. Where did you get those?

A. I don't remember that. Just picked them up here and there, I guess. [76]

Q. You can't remember having bought them?

A. No, sir, not the exact place that I bought them.

Q. And how long had you had those?

A. I had them around a year.

Q. Around a year. Now this valve pack, where did you buy that?

A. The valve pack, I'm not positive, but I think I bought it out at Fort Richardson at the PX.

Q. What color was it?

A. It was a kind of a tan—leather—valve pack.

Q. And do they still handle the same kind out there?

A. They probably do at the PX, yes.

Q. And did you buy that yourself?

A. I bought that myself.

(Testimony of Roy Callaway.)

Q. And you think you paid \$30.00—let's see—\$30.00 for that? A. Yes, sir.

Q. And how old was that?

A. That was less than a year old. It was practically new.

Q. You had used it for traveling or for moving from place to place? A. Yes.

Q. Now you had some other luggage; what other luggage was it you had? [77]

A. I had a large Samsonite suitcase.

Q. Where did you get that?

A. I don't remember; I probably got it at the PX, too.

Q. And you don't remember getting it there?

A. No, sir.

Q. How long had you had that?

A. I had that about a year.

Q. You bought that yourself? A. Yes, sir.

Q. But you can't remember whether you bought it around Anchorage or down in the States?

A. I know I got it here in Alaska. I either got it at Whittier or out here at the Post. I might explain why I don't remember these things. My wife had a lot of luggage too, see, so we switched them around. I don't know whether it was one that I bought or whether it was one—or she had the one I bought. I don't remember.

Q. And you can't remember for sure then which one it was that burned, whether it was yours or the one that belonged to your wife?

(Testimony of Roy Callaway.)

A. All I know is they was about the same value—\$35.00 a piece.

Q. It might have been the one that your wife bought and belonged to her?

A. It might have been. [78]

Q. All right. Now there's some other kind of seabags, where did you get those seabags?

A. At the Army Surplus.

Q. Well they're a dollar and a half a piece, aren't they, over there now?

A. No, I paid \$5.00 a piece for these.

Q. Well, were they just ordinary seabags?

A. They was large seabags, yes.

Q. Surplus—property store?

A. Well it was Army Surplus store, yes.

Q. Now you had two dozen wool work socks; where did you buy those?

A. Well I bought part of them here—part of them out on the Post—part of them at Cape Newenham.

Q. Well did you always, when you went out of town on a trip, take two dozen wool socks with you?

A. Yes, because they was no way to get laundry done out there, so you either take a lot of them or wear dirty socks.

Q. Now had you worn those socks any since you'd been there?

A. I'd worn some of them; some of them I'd never had on.

Q. Had you counted those socks at any time?

(Testimony of Roy Callaway.)

A. Yes.

Q. You had?

A. I counted them before I took them out.

Q. You counted them; you know there were exactly two dozen? [79]

A. You are very careful about your underclothes and your socks when you go out on those brush jobs.

Q. Now then you had a dozen dress socks; what kind of socks were they?

A. They were just ordinary dress socks. Oh I don't know, maybe some of them was nylon—rayon—or——

Q. Some rayon? A. Yes.

Q. You claim here that they was worth \$16.68. Where did you figure out the 68c?

A. Well that I don't know. Maybe my wife got those for me. I think she did get those, I don't remember.

Q. Did your wife help you in making up this list? A. She certainly did.

Q. Where is she now? A. She is Outside.

Q. So you can't remember where you bought any of those dress socks? A. No, sir.

Q. You don't know what condition they were in?

A. I know they were in good condition or I wouldn't have had them.

Q. Now you had two pair of dress shoes. What kind of shoes did you have? A. Florsheim.

Q. And where did you buy those?

(Testimony of Roy Callaway.)

A. I bought one pair at Bayles here in Anchorage, and one pair in Seattle.

Q. How long had you had them?

A. The pair that I got at Bayles, I had them less than a month; and the ones that I got in Seattle, I had them—I bought them the following fall—about a year before that.

Q. You mean the prior fall? The fall before?

A. Yes, sir.

Q. You had them about a year——

A. Uh-huh.

Q. ——and the other pair you had only had about a month? A. Yes.

Q. And had you worn them?

A. None at all.

Q. Why did you take them out there with you?

A. I had no place to leave them.

Q. You just took them because you had no place to leave them?

A. That's the reason I took all of this stuff out there with me because I had no where to leave it. If I had left it in town I would have had to pay storage on it. And I had a few things in the cleaners is the only things that I left in town.

Q. You couldn't leave them with your wife at home? [81]

A. My wife and I were separated at that time.

Q. Oh, I'm sorry I mentioned it; I didn't know that. You hadn't mentioned that and I didn't mean to dig into your personal affairs.

(Testimony of Roy Callaway.)

Now, then you had two pair of work shoes—\$35.00. Were they ordinary work shoes?

A. One pair was. I paid \$35.00 for one pair of them, but I had worn them and I valued them at \$35.00.

Q. Where did you buy those?

A. Right at the NC Company here. They're Paul Bunyon Pack. I have two pair of them now. They cost \$37.50 now; but I paid \$35.00 for the pair that I had out there, and I had another pair of work shoes besides those.

Q. And you were using those regularly?

A. I'd used them some, because I didn't wear the same pair of shoes every day.

Q. Oh, of course not. How long had you had those work shoes?

A. Oh, I'd had them less than a year.

Q. Had you worn them pretty steadily?

A. Well, I had worn them some; that's the reason I priced the value at \$35.00, because that's what I paid for the one pair.

Q. Now these two sweaters that you testified about. You say your wife made those for you? [82]

A. Yes, sir.

Q. You didn't have either one of them on that day? A. No, sir.

Q. And they were never priced, or you never obtained an appraisal of them from anyone, did you? Just your own judgment on it?

A. The only thing is that my wife said that the——

(Testimony of Roy Callaway.)

Q. No—no, not what your wife said now——

A. She made them, I had to take her word for it.

Q. Yes. She made the sweaters for you?

A. Yes, sir.

Q. And she bought the wool? A. Yes, sir.

Q. And gave them to you? A. Yes.

Q. And that's all you can tell us about those?

A. That's right.

Q. Now you skipped in your testimony any statement about a pair of rubbers. What do you mean by rubbers? A. A pair of galoshes.

Q. Galoshes. A. Uh-huh.

Q. Well, were they low-tops or high-tops?

A. They was just ordinary high-top galoshes.

Q. And you say they were worth \$15.00? [83]

A. Yes.

Q. And you do know that the regular price is about \$5.00 for galoshes, don't you?

A. No, I don't know that.

Q. Well, were these anything extra or different——? A. They were dress galoshes.

Q. What? A. They were for dress.

Q. Dress? A. Yes.

Q. Something similar to those sitting over there?

A. No.

Q. They weren't. What kind were they?

A. They were smooth, slick rubber.

Q. Smooth, slick rubber——

A. Lined inside.

Q. And you called those dress?

(Testimony of Roy Callaway.)

A. Well, as near dress as you could get a galosh.

Q. Well, you didn't testify about that in going down the list and I wondered why you failed to mention it before. Do you know why you didn't mention it when you were testifying in chief?

A. I don't—maybe I didn't have it on this list or something.

Q. Well, look and see if you do?

A. —or maybe I missed it. (Looks at list.) Yes, here's rubbers I've got here. One pair of rubbers. [84]

Q. What is the price of them there?

A. \$15.00.

Q. Well, have you ever bought any since?

A. No.

Q. Now this toilet kit; who bought that Roth's Toilet Kit for you? A. My wife.

Q. And where did she buy that?

A. I don't know.

Q. How long have you had that?

A. I hadn't had it very long.

Q. Well men carry those for many, many years, don't they? Sometimes? How long do you think you had yours?

A. Less than a year.

Q. Less than a year.

A. Because it was a birthday present.

Q. And now you had some toilet articles in this; did you? A. Yes.

Q. What did you have in it?

(Testimony of Roy Callaway.)

A. Oh, I had scissors and safety razors—and whatever you usually have in a——

Q. Scissors and a safety razor?

A. Well a lot of things. I don't remember exactly what——

Q. Can you think of anything else you had in there?

A. I had a razor and whatnot—— [85]

Q. What do you mean by "whatnot"?

A. I can't remember correctly what I had in it——

Q. Was it a Gillette razor?

A. It was a Gillette electric razor.

Q. A Gillette——

A. I mean a Remington electric razor and a Gillette safety razor.

Q. Well you had two razors now instead of one?

A. Yes.

Q. And you had also a pair of scissors?

A. Yes.

Q. Fingernail scissors, did you, something of that kind?

A. I had two pair of scissors.

Q. Oh, you had two pair, not one pair now?

A. I might not have listed everything exactly——

Q. Now where did you buy this wristwatch?

A. I bought this wristwatch at King Salmon.

Q. From whom? A. At the PX.

Q. Now is there any record over there as to what you paid for it or do you know whether they make a record of the sale of those watches?

(Testimony of Roy Callaway.)

A. I don't know whether they make a record or not, but I know that you can price any watch like it. And I know that is what I paid for it. [86]

Q. Now at the PX you can get those things cheaper than you do on the regular market?

A. You can if some GI buys them for you, but if you go in there and buy it yourself, you don't get it any cheaper.

Q. Did you go in and buy this one?

A. I certainly did.

Q. And how much did you pay for this one?

A. \$87.00.

Q. Then your statement of \$87.50 is wrong then?

A. Well, I didn't bring the cents on any of this. It was \$87.50 I paid but I didn't—just like a lot of things here where there is some odd cents, I didn't mention it before. I didn't think it was necessary.

Q. Now this vibrator, you bought that over there too, didn't you?

A. I bought that at the Skytel Trading Post.

Q. What did you use that for?

A. Well you use it for several things. It had several attachments. You might want to use it on your head or your back or your arms or your legs or anywhere you wanted to use it.

Q. You bought that over there, too?

A. I bought that at the trading post, yes.

Q. And where was that in the building that burned? Where was it kept in the building? [87]

A. The vibrator?

Q. Un-huh.

(Testimony of Roy Callaway.)

A. It was kept in my suitcase.

Q. In your suitcase. Now did you have a wrist-watch on the day that you were working?

A. No, sir.

Q. Did you buy the watch to wear?

A. I didn't pay \$87.00 for a workwatch, no.

Q. And you didn't have a workwatch?

A. No.

Q. Now you bought some dress belts; where did you buy those dress belts?

A. My wife bought those for me.

Q. And were they bought here in town?

A. I don't know where she got 'em.

Q. Are they the same as the belts you have on now?

A. Yes, sir. Identically the same as this one I have on.

Q. And you estimate the value of those as \$7.50 a piece? A. Yes, sir.

Q. And you don't know where they were bought?

A. No, sir. I know what I paid for this one. It's a genuine kangaroo hide, if you care to examine it.

Q. Well, in this one here, you just refer to them as dress belts? A. Yes, sir.

Q. And you paid \$7.50 a pair for them, did you?

A. That's what my wife said she paid for them.

Q. You weren't with her when she bought them?

A. No, sir.

Q. And you didn't see the price on them?

(Testimony of Roy Callaway.)

A. I know that is what this one cost and they were just exactly like this one.

Q. Do you know if they were bought here in Anchorage?

A. I don't know where she bought them.

Q. Now this three pair of overalls, how long did you have those?

A. Two paid I'd never had on; and the other pair was worn.

Q. And you think they're worth \$17.37?

A. You just go buy a pair of them.

Q. I don't know, I just wondered.

A. Yes.

Q. They cost that did they?

A. They certainly do.

Q. Now this pair of dress gloves at \$15.75; where were they bought?

A. My wife bought them; that was another present.

Q. You don't know where she bought them?

A. No, sir.

Q. You never bought any of them yourself?

A. I have a pair over there in my coat similar to them. If you would care to look at them. [89]

Q. Where did you buy those?

A. They was also a present.

Q. You do know that you can buy an awfully fine dress glove in Anchorage for \$5.00, didn't you?

A. No, sir.

Q. Haven't you tried?

(Testimony of Roy Callaway.)

A. I have tried but I know you can't buy a pair for \$5.00.

Q. You can't? A. No, sir.

Q. You can buy wool-lined ones for \$6.50, can't you—half of it?

A. Well these is leather gloves; maybe they're not even a dress glove, but I call them a dress glove.

Q. And you don't know how much actually your wife paid for them, but you feel that \$15.00 was approximately right?

A. I have priced gloves similar to them, and the pair that I have now is similar to that glove and that's what they cost.

Q. Where did you buy these?

A. I didn't buy 'em.

Q. Well where did they come from? What store?

A. I don't know where these come from. I said they was a present.

Q. A present this winter?

A. For Christmas. [90]

Q. And you think they would cost \$15.00?

A. Yes, sir.

Q. Where did you get this alarm clock?

A. That was another present from my wife.

Q. Do you know where she got it?

A. She paid eighteen dollars and something for it. I valued it about \$9.85, because I'd had it about a year, but it was just like new.

Q. Was it a winding clock?

A. It was a winding clock, leather-bound, fold-

(Testimony of Roy Callaway.)

ing clock that she bought for me to take on brush jobs with me.

Q. What make clock was it?

A. I don't remember what make it was.

Q. Well, was it a Big Ben.

A. I don't remember.

Q. You don't remember anything about it?

A. I remember it was a leather-bound folding clock.

Q. What date did you go over to King Salmon?

A. October the first, 1951, the last time.

Q. Had you been there working on this job prior to that time?

A. Yes, sir.

Q. Who had you worked for then?

A. Haskell Plumbing and Heating.

Q. Now this building that you have been speaking [91] of— I believe you said it was a Quonset hut, was it?

A. Yes, a large one.

Q. A large one. And it had the stove—the heating equipment were oil stoves and connected to an outside tank; is that right?

A. Outside barrels.

Q. Barrels?

A. Yes, sir.

Q. How many stoves were there in there?

A. Two—in operation. I think there was a third stove there, but I don't remember whether it was hooked up or not. I know at one time that it wasn't.

Q. Did the hook-up on them always look all right to you?

A. Well, to tell you the truth I never did pay much attention to them.

Q. You do know though—you ought to know ex-

(Testimony of Roy Callaway.)

actly how they ought to be done, being a plumber, don't you? A. Yes, sir.

Q. And did you notice anything about these that indicated they weren't properly hooked up?

A. I never had any occasion to pay any attention to them, because I never worked on them.

Q. And you didn't have anything to do with keeping them operated? A. No, sir. [92]

Q. Now, didn't you have a—someone who came to the barracks each day and cleaned it up? Wasn't there a service such as that there?

A. I don't know.

Q. Well, did you make up your own bed?

A. Did I make up my own bed?

Q. Uh-huh. A. No, sir.

Q. Well, somebody changed the sheets and linens there for you, did they not? A. Yes, sir.

Q. Now, do you know who that was?

A. No, sir, all I know is he was a bull-cook.

Q. And the bull-cook worked up at the boarding place—or where you ate, did he?

A. I don't even know where he worked.

Q. He was just a bull-cook, then?

A. That's right.

Q. Could you remember his name if I said it to you? A. No, sir.

Q. Now where did you eat, Mr. Callaway?

A. We ate in the messhall.

Q. And where was the messhall from this building that was furnished there, would you say?

(Testimony of Roy Callaway.)

A. Oh, I would say it was a hundred or a hundred and fifty yards away from the building. [93]

Q. And did you eat there just with employees of the Haskell Plumbing and Heating Company or were there other people eating there?

A. There was other people ate there.

Q. Now, who were the other people working for that ate there with you?

A. I don't know, they was just construction——

Q. Working—— A. On the job, yes.

Q. There was more work going on other than the plumbing, of course? A. Yes, sir.

Q. Now was the building itself being constructed and carpenters working at the time you were working there? A. What building?

Q. Well, any of the buildings. A. Oh, yes.

Q. Now was there also concrete men working there? A. Yes, sir.

Q. Now, who were they working for?

A. I don't know. I know there was a general contractor there by the name of Gaasland, but there might have been several different contractors for all I know.

Q. Well, you understood then that Mr. Haskell was a sub-contractor under the general contractor?

A. Yes, sir.

Q. And Gaasland was the general contractor?

A. Yes, sir.

Q. Now, did you eat regularly there at this mess house—messhall. I believe you referred to it as messhall? Did you eat regularly there?

(Testimony of Roy Callaway.)

A. Yes, sir.

Q. And do you know who was furnishing that food for you? A. No, sir.

Q. It was being operated by Gaasland, wasn't it? Gaasland Plumbing—or Gaasland Contractors?

A. I would think so. All that I know is that Haskell had to furnish our food. Now, how he done it I don't know.

Q. If he paid for it, that was all right with you?

A. Certainly, because we didn't pay for it.

Q. You didn't do any cooking yourself?

A. No, sir.

Q. —and neither did the—Haskell himself—or any of them? That ate at this mess house there?

A. Yes, sir.

Q. I see. Now did you ever fill one of those oil stoves, yourself? A. No, sir.

Q. Did you ever have anything to do with lighting it? A. No, sir. [95]

Q. Now, did you have any personal agreement other than the contract in writing here with any of the Haskell Plumbing people about employment over there? A. No, sir.

Q. I notice in answering Mr. Butcher's question—I believe it was kind of compound and I want to clear that. What you meant by the contract—was the written contract that was introduced here this morning in evidence between the Plumbers' Union and F. M. Haskell, who signed it, that was introduced here——

(Testimony of Roy Callaway.)

A. That was what I meant by the contract between Haskell and our Local.

Q. And that's the only contract you had in employment? A. That's right.

Q. I see. Now did——

The Court: I would like to take a few minutes recess at this time, Counsel, but before doing so, I would like to make this suggestion: It is observed that all the testimony of this witness concerning the items of his claim for damage—and where he got them—and how long he had them—and the price he paid, were all covered by interrogatories which were propounded to him by the defendant. Now, it is also noted that similar interrogatories were propounded to—or submitted to each of the other nine plaintiffs, and that all of them have answered [96] excepting one, apparently, and that is W. Van Smith. Now, according to the Civil Rules of Procedure—The Rules of Civil Procedure—interrogatories taken in this manner may be used to the same extent as depositions. Reading from Rule 33 * * * “for the use of the deposition of a party,” that is, to the same extent as provided in Rule 26(d). Now Rule 26(d) provides that “At the trial or upon the hearing—At the trial”—the rest of it is immaterial—“At the trial any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition * * * in accordance with any one of the following provisions:

(Testimony of Roy Callaway.)

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony * * *

(2)——

That is not the one I mean to refer to. It is subdivision

“(2) The deposition of a party * * * may be used by an adverse party for any purpose.”

Now then, if these interrogatories can be used the same as a deposition under our rules, and if the deposition of a party may be used by an adverse party, why cannot we greatly shorten the progress of this trial by using these interrogatories, and why are they not offered? Now, the reason I ask that question is it strikes me that with each of these [97] nine witnesses—if the same examination be pursued—it would take at least—with eight more witnesses—at least eight more court hours. Why cannot we use such interrogatories?

Mr. Butcher: If it please Your Honor, your summation of the rule is exactly in accordance with my own. I had suggested to Mr. Bell, as he mentioned here earlier this morning, that I had suggested the matter to him in the form of a stipulation, that we agree that certain depositions—or these interrogatories—could be used in lieu of calling the witnesses; he declined to so stipulate. I then examined the rule to my own satisfaction and found out that the interrogatories and the answers to the interrogatories had the same effect as a deposition, and could be introduced into court in the same man-

(Testimony of Roy Callaway.)

ner as a deposition, and as Your Honor has said—for any purpose against the adverse party. I intended to do it with Mr. Holbrook, because through circumstances beyond our control we were unable to take his deposition, but I did intend to call the witnesses because I felt I had to call them, in some respects anyway, and I thought that to avoid an argument I would examine them fully. Now, I am going to move at this time, Your Honor, that the interrogatories propounded by Mr. Bell and answered by these witnesses under oath, in full and in great detail, in exactly the same manner as we have [98] re-examined this witness, now be introduced into evidence and be considered by the Court as evidence, and that the examination of these witnesses be restricted to whatever testimony they have pertaining to their employment and their location at King Salmon, and not as to the value of the goods lost.

Mr. Bell: Your Honor, I object to that as incompetent, irrelevant, immaterial, not binding on the defendant and depriving——

The Court: You object to what?

Mr. Bell: ——examination of the witness——

The Court: You object to the motion as incompetent, irrelevant, and immaterial?

Mr. Bell: The motion is to introduce the documents and use them in lieu of evidence, and I say the documents are incompetent, irrelevant, and immaterial——

The Court: Well, which, Counsel, are they in-

(Testimony of Roy Callaway.)

competent—are they irrelevant, or are they immaterial? Will you please specify?

Mr. Bell: They are incompetent because they don't meet the rule of evidence; they are immaterial——

The Court: Why don't they meet the rules of evidence?

Mr. Bell: Why, I don't have any chance to see the witness and examine the witness on the witness stand, and you submit interrogatories to find out what your defense is. [99] That is the purpose of it.

The Court: But will you answer what the Court has just suggested as to what the rules provide?

Mr. Bell: Sure. It means we can impeach the witness with those interrogatories if we care to.

The Court: That's one reason.

Mr. Bell: The adverse party can——

The Court: No. No. The rule says the deposition of a party may be used by an adverse party for any purpose.

Mr. Bell: Adverse party. That's right. I'm the adverse party, I don't want to use that——

The Court: Well, I'm suggesting if you represent the adverse party, why can't he present these depositions—that he's moving to do so?

Mr. Bell: Your Honor, I won't argue with you. Honestly, if you just had time to think——

The Court: Well, I have had the time to think——

Mr. Bell: That's depriving me of the oppor-

(Testimony of Roy Callaway.)

tunity to face the witness, and he is here in the courtroom.

The Court: But you should have thought of that when you submitted the interrogatories.

Mr. Bell: Oh, no, that's a right we have for discovery. That's a method of discovery.

The Court: Well, but the rule provides that if you submit them they can be used. [100]

Mr. Bell: That's if I want to use them.

The Court: No, sir——

Mr. Bell: ——I'm the adverse party——

The Court: The adverse party may use them.

Mr. Bell: Why would he want to impeach his own witness?

The Court: He doesn't have to offer them to impeach, Mr. Bell.

Mr. Bell: Well, you heard my position. I'll stand by it.

The Court: The Court is very much inclined, and I think it is entirely proper, that the motion be granted, and that the interrogatories be received in evidence at this time—that is, each of them as depositions and be considered by the Court accordingly; and that further testimony of the witnesses will exclude the testimony covered by these interrogatories.

Mr. Bell: Your Honor, I wish an exception.

The Court: Yes, sir, you may have it. But still an exception, Counsel, are you still persuaded that an exception is necessary?

(Testimony of Roy Callaway.)

Mr. Bell: I am convinced more than ever since I read this recent case.

The Court: I'd like to hear from you on that case, because the rules very definitely state that no exception is necessary. [101]

Mr. Bell: I am referring to the statute. The statute says it. The Alaskan statute. I don't think the rules say anything of that kind.

The Court: I'll check that but I am quite certain it's the rules, because it is only since the adoption of the rules that we found it unnecessary to take exceptions.

Mr. Bell: No, the old statute, Your Honor, the old Alaskan statute says that you don't need to take exceptions, that the matter is treated as if an exception is taken. Your statute says that.

The Court: Well, perhaps I'm confused on that point. I'll look into it. Some times we forget which is which. Which was the rule before and which was the rule after we adopted these rules.

Mr. Bell: That is right, Your Honor, and that is why I am doing that.

The Court: Well, I will look into that.

Mr. Butcher: It is my understanding, Your Honor, under the old procedure we always took an exception: under the new procedure we have an automatic exception when we make the objection.

The Court: That is precisely my recollection. We will look into it.

Well, we will take a recess for ten minutes.

(Thereupon the court recessed from 2:50 until 3:00 o'clock.) [102]

The Court: Gentlemen, during the recess I had an opportunity to look into this question of "exception" and direct Counsel's attention to Rule 46, which is as I recalled it is as follows: "Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him." Now I cannot see in view of that rule where any formal exceptions to the rulings or orders of this court are necessary. If, however, you insist upon it, you may have an exception automatically to every adverse ruling of the Court.

Mr. Bell: All right. Let the reporter just write it then—exception taken.

The Court: Well, she has taken that down, no doubt.

Mr. Bell: All right. That will save time.

Mr. Butcher: The reporter will have to write something that isn't a part of what is said in open court. I don't think that the reporter should write

the word [103] "exception" each time he makes an objection because——

The Court: No. Oh, no. Of course not.

Mr. Bell: Well, if I make an objection, I am certainly going to want an exception if——

The Court: The Court has ruled that you need not take an exception, and that you may have an exception, if you desire, to every ruling of the Court. We need not repeat that——

Mr. Bell: All right.

The Court: ——and every objection made throughout the record.

Mr. Bell: All right.

The Court: Now, on this matter of the interrogatories being admitted in evidence as depositions or to the same effect as depositions under the Rule, I also direct counsel's attention to Section (f)—sub-section (f) of Rule 26.

Mr. Bell: 26. Sub-section (f)?

The Court: Yes. We had quoted from sub-section (d)—(d) (2). Now sub-section (f) provides that the introduction in evidence of the deposition for any other purpose than that of impeachment makes the deponent the witness of the party introducing the deposition, but that does not apply to this particular instance as the deposition of a party as distinguished from the deposition of a witness. And this,—that at the trial or [104] hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party. Therefore, Mr. Bell, if these interro-

gatories are admitted, as they have been, as depositions, you still, of course, have the opportunity to rebut any part of them. That you may do by calling any party as your own witness for such purpose, but it would not be subject to the ordinary rules of cross-examination. You may introduce any competent evidence to rebut the statements of the witness in these depositions, which does not deprive you of your opportunity to defend against the statements made by the witness. That seems to be the plain intent and purpose of the rule,—to simplify our procedure, avoid endless taking of detail which would not be helpful at all in the determination of the issues of the case. Therefore, we adhere to the former ruling that these interrogatories be admitted in evidence upon the motion made by counsel for the plaintiffs, with the understanding that the defendant may rebut, then, the evidence contained in them by competent testimony.

Mr. Bell: But, as I understand, I will not be permitted to cross-examine the witness concerning them?

The Court: That is true.

Mr. Bell: Your Honor, that was what I insisted on——

The Court: Yes. [105]

Mr. Bell: ——having the privilege of cross-examining the witness.

The Court: I considered that very carefully. I do not believe that such is permitted under this procedure.

Mr. Butcher: I believe Mr. Callaway was on the stand.

The Court: Yes, Mr. Callaway may be recalled.

Mr. Butcher: I have a couple of questions to ask Mr. Callaway on redirect, Your Honor, and I would like him to return to the stand.

The Court: Yes. Mr. Callaway, will you take the stand.

(The witness, Mr. Callaway, resumed the stand.)

Mr. Bell: Say, Mr. Butcher, if you don't mind, I would like to ask him one more question before you start on cross-examination. (Redirect examination.)

Attorney for Defendant:

Q. You testified about the oil stoves and about who was responsible for them. Now, do you know personally who attended those stoves or took care of them? A. No, sir.

Q. The stoves were just there and you saw them and know that they were used for heating?

A. I wasn't there but about nine or ten days before the fire. [106]

Q. And during that time you didn't see anyone tending the stoves?

A. I was working all day—each day.

Q. And you don't know who owned the Quonset hut? A. No, sir.

Q. Or who furnished it? A. No, sir.

Mr. Bell: I see. That's all. [107]

(Testimony of Roy Callaway.)

Examination by the Court

Q. The Court is not quite clear, Mr. Callaway, on your testimony regarding the valuation placed on these various articles of clothing and personal effects—as to whether in all cases they were cost—or whether you allowed for depreciation. Will you inform me as to that?

A. Your Honor, some of those that was new was at cost; and some of them that had been used was at the valuation I fixed.

Q. I thought that I understood from your testimony that in each case as to the clothing, that was the cost.

A. Some of the—like the suit it was practically new and it cost me that to replace it. There's one instance there in the shoes——

Q. Oh, yes. It was either cost or replacement value, the figure which you used? A. Yes, sir.

Q. Well, then in neither event have you allowed for depreciation—or have you?

A. I have in some of them, yes. Like on the shoes there. I had one pair of shoes, and I lost two pair of work shoes. One pair cost me \$35.00, but I had worn 'em so I valued the both pair at \$35.00.

Q. I understood that, but that was the only instance I heard in which you used the depreciated value. A. And the clock.

Q. And the clock. Yes.

The Court: Now, thank you; that is all.

(The witness left the stand.)

Mr. Butcher: Mr. Judson. I forgot to ask, Your Honor. I have been in the habit of standing up before Judge McCarrey, and I wondered if Mr. Bell could remain seated; now does Your Honor have a ruling on that?

Mr. Bell: Oh, excuse me, if I did.

The Court: In this department, gentlemen, we have not required the Counsel to stand, and there appears to be no need for it, and we are a little less formal. We also are in this situation that the counsel table is closer to the witness and to the reporter so there is no need of it. So you may be seated if you wish.

Mr. Bell: Thank you. I didn't mean to do that, but since you said it is all right, I'll be seated. [110]

The Court: Oh, yes. I'm sorry I didn't direct your attention to it, Counsel.

THOMAS B. JUDSON

was called as a witness in his own behalf, having been duly sworn previously, testified as follows:

Direct Examination

By Attorney for Plaintiffs:

Q. Will you state your full name?

A. Thomas B. Judson.

Q. And are you the Tommy Judson whose name has been placed on the lawsuit against Haskell Plumbing and Heating Company, filed in the District Court at Anchorage, Alaska?

A. Yes, sir.

(Testimony of Thomas B. Judson.)

Q. You are the Tommy Judson who is a party to that action? A. Yes, I am.

Q. What is your occupation, Mr. Judson?

A. Plumber.

Q. Did you ever work for Haskell Plumbing and Heating Co? A. Yes, I did.

Q. Will you state when and under what circumstances?

A. Well, I was dispatched on September 6 to the Haskell Plumbing and Heating Company.

Q. September 6 of what year?

A. 1951. The Haskell Plumbing and Heating of King Salmon, Alaska. [111]

Q. And was that under the terms of any agreement that you know?

A. It was under the procedure we go by to go to work.

Q. Well, what was that procedure?

A. We go to the Local Union and get on the work list, and when a company calls in for—in this instance, Haskell called for me and I got a ticket and proceeded to King Salmon.

Q. Well, did you know anything about an agreement or a contract between Haskell Plumbing and Heating and the Union?

A. Why yes, we have a contract with all contractors.

Q. Was this procedure you spoke of under the terms of that contract?

Mr. Bell: I object to that as leading and suggestive.

(Testimony of Thomas B. Judson.)

Mr. Butcher: I'll withdraw the question.

The Court: It is leading.

Q. Was this hiring when you worked for Haskell under them?

A. It was under the ruling that Local 367 signed with the Haskell Plumbing and Heating on all contracts.

Q. By the word "ruling" do you mean the word "contract"?

A. The word contract, yes, sir.

Q. And you were aware of that contract?

A. Yes.

Q. You stated that was on September 16th?

A. September 6, 1951.

Q. September 6. Now pursuant to that dispatch slip, what did you do?

A. Well, I went to the hall and Sam Ogle wrote me out a dispatch slip.

Q. I show you Plaintiff's Exhibit number 2, and ask you if you recognize that document?

A. Yes, I do.

Q. And what is it?

A. A dispatch from Local 367, to the Haskell Plumbing and Heating.

Q. Is that copy the one that was given to you?

A. This is a duplicate.

Q. It is a duplicate. And what, Mr. Judson, did you do with the original?

(Testimony of Thomas B. Judson.)

A. I turned it over to the job steward when I arrived on the job at King Salmon.

Q. Who was that job steward?

A. Michael Cullinane.

Q. Now, after you got the dispatch slip and before you arrived at King Salmon, what procedure was followed in getting over there?

A. I went to the Pacific Northern Airlines office and presented my dispatch and they had a ticket waiting for me to go to King Salmon. [113]

Q. What did you have with you at that time?

A. Well, I picked up my gear.

Q. Your gear? A. Yes.

Q. That was your personal property?

A. Personal belongings.

Q. When did you—did the flight to King Salmon take longer than one day—the flight?

A. No, ordinarily not.

Q. You arrived on the same day? A. Yes.

Q. Now, when you arrived there what happened?

A. I believe the foreman, Mr. Mulcahy, met us at the——

Q. The foreman for who?

A. Haskell Plumbing and Heating met us at the airport and took us to the barracks.

Q. And how did he take you to the barracks?

A. In a weapons carrier belonging to Haskell Plumbing and Heating.

Q. You say he took you to the barracks. What barracks?

(Testimony of Thomas B. Judson.)

A. The barracks which in our agreement they furnished.

Mr. Bell: I object to referring to the agreement. The agreement speaks for itself.

Mr. Butcher: What——

The Court: Wait just a moment. You are objecting [114] to the answer rather than to the question, I presume?

Mr. Bell: Yes, because it's not responsive to his question——

Mr. Butcher: Well, Your Honor, the ruling is that they—not being responsive is available only to the person that requests it and not to another party. I asked the question——

The Court: I don't think that's true.

Mr. Butcher: It is true, Your Honor, if I may say so. Let me illustrate. I asked a question and he doesn't answer the question. I'm asking the question and I'm entitled to an answer, so I object on the grounds that it's not responsive and insist that he answer my question. Now, if he doesn't answer the question but I'm satisfied with what he says, I don't make any objection, but other counsel can not object if I'm satisfied that he's answered my question, Your Honor.

The Court: Well, if that were the true rule of evidence, then the witness could make some answer which is wholly unresponsive and the adverse party has no opportunity to object to its competency or materiality. I cannot conceive that that is the rule. In this particular instance, however, it seems rather

(Testimony of Thomas B. Judson.)

immaterial. The answer stated that he was taken to a barracks——

Mr. Bell: If he says just “taken to a barracks”—— [115]

The Court: ——a barracks.

Mr. Bell: ——I have no objection. It was what he started following it with as provided in the contract——

The Court: Well, that portion of the answer in which you referred to the contract, being a conclusion of law, will be stricken.

Q. (By attorney for plaintiff): What was the nature of the barracks?

A. It was a Quon-set hut with a number of bunks in there. I believe at the time there were about sixteen bunks, and a place to hang our clothes and a washroom.

Q. Were other men occupying that barracks?

A. Yes, there were.

Q. And were they fellow employees of yours?

A. Yes, they were.

Q. And who were they working for?

A. Haskell Plumbing and Heating.

Q. Now in this barracks, was there storage space provided?

A. Well, there was not really storage space. We put our gear around our own bunk and had hooks and such as that to hang our clothes on.

Q. What other facilities were available besides the bed?

(Testimony of Thomas B. Judson.)

A. Well, a washroom, unless you built a cupboard out of an eggcrate or something like that.

Q. What other facilities to make you comfortable there?

A. Well, they furnished bedding; and they had this rack to hang your clothes on.

Q. Was there any heat in the building?

A. And of course they naturally heated them.

Q. How was it heated?

A. With oil stoves; two oil stoves.

Q. Were they together or at each end of the barracks?

A. One on each end of the barracks.

Q. One on each end of the barracks. And who furnished these facilities, if you know?

A. Haskell Plumbing and Heating.

Q. While you were living at the barracks, were you working? A. Yes, I was.

Q. And who were you working for?

A. Haskell Plumbing and Heating.

Q. And did you receive checks for your work?

A. Yes, I did.

Q. Who issued to you that check?

A. Haskell Plumbing and Heating.

Q. And what type of work were you doing?

A. I was working on new construction on the project about a mile from where we lived.

Q. And calling your attention to October 11, 1951, were you away from the barracks that day at all? [117] A. Yes, I was.

(Testimony of Thomas B. Judson.)

Q. And in performance with your regular duty?

A. Yes.

Q. Did anything unusual happen, and if so tell us about it?

A. Well, on that particular day I was working in the power house and about one-thirty the foreman, Mulcahy, came in and said "Come on, fellows, the barracks is burning down." I and the other fellows jumped in the car and we drove over to what was left of the barracks. It was still burning.

Q. By the time you arrived there, what was the condition of the fire? As to its structure?

A. Just all flames. There was hardly anything——

Q. No chance of entering?

A. Not a chance in the world.

Q. Now, at the time of the fire or immediately thereafter, did you make any investigation as to the cause of the fire?

A. Well, the next day we looked around in there, and it just appeared to me——

Mr. Bell: I object to the answer "appeared to me", your Honor.

Mr. Butcher: Tell us what you saw.

The Court: What you saw and observed. That is correct.

A. There really wasn't much to see; nothing but a twisted bunch of steel—ashes—and the stove was——appeared to be——

Mr. Bell: I object to how the stoves appeared to

(Testimony of Thomas B. Judson.)

be. If he can testify as to what he found, that's all right. [118]

Mr. Butcher: You can testify as to what the stove looked like.

The Court: ——to what it looked like, certainly.

Mr. Bell: Yes, what did it look like?

A. Well there was just a shell of it left there; split open. Well there really wasn't anything left of it hardly; just melted up; crumbled.

Q. Which stove was that?

A. That was the first one.

Q. What was the condition of the other with respect to the first one?

A. I don't recall it; I mean I was just disgusted, I didn't look.

Q. As a result of your investigation of the stove, are you able to give us an opinion as to what happened to the stove?

Mr. Bell: I object to that as incompetent, irrelevant, and immaterial—an opinion.

The Court: I doubt if the witness is qualified to give an opinion in that respect. It would seem that that should be done—an opinion in a case like this should be done by someone qualified in that line of work; not any layman.

Mr. Butcher: This man is hardly a layman, Your Honor; he is a plumber. As a plumber he has obviously engaged in installation of heating equipment and piping. If he were not such, it would be within the ability of an ordinary, [119] intelligent person to determine whether a stove that had been

(Testimony of Thomas B. Judson.)

in a fire had been—burst open by explosion of some kind. Had burst. In other words if he saw it split in two and the doors off, he would certainly as an ordinary observer be——

The Court: Well that might be, counsel. But if that is the basis upon which you put your question, as to opinion, he should be further qualified as to experience in that line. When I suggested a minute ago in that line of business I was thinking of course of a fireman or fire marshals or fire inspectors. But a plumber who has made a living by installing heating equipment might be so competent, if you will qualify him first.

Q. (By attorney for Plaintiff): How long have you been a plumber? A. 22 years.

Q. And are you a journeyman plumber?

A. Yes, I am.

Q. As a journeyman plumber, are you competent and qualified to work in all types of plumbing?

A. Yes, I am.

Q. And with reference to heating systems, have you ever installed heating systems?

A. Yes, I have.

Q. Are you familiar with furnaces and stoves?

A. Yes.

Q. And you know how they are installed, and what safety measures to be taken to keep them operating safely? A. Yes, I did.

Q. And if a stove pipe that you had experience with, burst open by internal force, would you be in a position to make an observation as to that?

(Testimony of Thomas B. Judson.)

A. Well I couldn't qualify as to that—that was the first fire I was ever in.

Q. What was that?

A. I say I couldn't qualify to definitely say that if a stove had actually exploded—as I say it was the first fire I was ever in or seen one in that condition.

Q. Now do you know whether the stove exploded or did not?

Mr. Bell: Now I object to that because he just stated—he said he could not qualify on that.

Mr. Butcher: He said he couldn't qualify as to whether the stove exploded in the fire or not. I am asking him if he knows, as a matter of fact, whether there was an explosion of the stove.

The Court: Well, counsel, I would say it is quite obvious that he wouldn't know if he was a mile and a half away; except by his observations.

Q. Now you lost certain personal property in this fire? A. Yes, I did. [121]

Q. And that personal property, you have set forth in full, to the best of your ability, in answers to interrogatories that were submitted to you—answering in—I wonder if Your Honor having the file could give me the data?

The Court: Oh, yes. Mr. Judson——

Mr. Butcher: Mr. Judson.

The Court: Mr. Judson. Yes. (The Court looks for the information.) The answer to interrogatories signed by Thomas B. Judson on February 8, 1957 (laughter). Yes, that is right—1957. Probably it is

(Testimony of Thomas B. Judson.)

1954 because it was filed on April 2, 1954, and with that correction——

Mr. Butcher: The interrogatories were submitted in 1953, Your Honor.

The Court: I see what's happened here. The notary taking the acknowledgment has used the same year date as when his commission expires, which no doubt explains the error. We will change this to '54, by leave of counsel. February '54.

Q. (By attorney for plaintiffs): Is that your recollection when you answered these interrogatories? A. I believe so.

Q. And at that time, you set forth to the best of your ability, the items you lost and the price thereof. Is that correct?

A. That's right. [122]

Mr. Bell: Now, Your Honor, I want to cross-examine him about what he proved—or attempting to prove—and did not rely upon the interrogatories, but has attempted to prove by this witness that all of those prices in there are correct. Now I have a right to cross-examine him, Your Honor.

Mr. Butcher: (laughter) If I were introducing a deposition, I'd still have to tie the deposition in with the facts and all that stuff.

The Court: I thought we could avoid all of this, but you did ask him whether the statements made in his answers to the interrogatories were correct answers to the best of his ability.

Mr. Butcher: Well, I withdraw that question then, Your Honor, and ask that it be stricken.

(Testimony of Thomas B. Judson.)

The Court: I fear that it is too late. I would say that that opens the matter up for cross-examination.

Mr. Butcher: I withdraw it then and ask Your Honor to disregard it and to strike it from the record.

Mr. Bell: I think he's laid it open now.

The Court: I doubt if we can do that now.

Mr. Butcher: Well, then, Your Honor, if Your Honor can't entertain that, I insist if I have not tied this witness into that deposition, as the Tommy Judson who took that deposition, and that those were his answers, then he could have found fault with that, and I did it simply to avoid [123] argument. Now, certainly we have no jury here, and if I withdraw that, Your Honor is going to have the depositions before him, or the interrogatories and I withdraw any reference that this witness made to those interrogatories; except, perhaps, I am sure I've got to ask him if he—I want you to understand that I am not asking him one word about the property that he has lost, and I've certainly got to tie them in with the deposition someway, and I think that I should at least ask him if he is the Tommy Judson who answered certain interrogatories propounded to him and then stop there. Now, if I withdraw all but that—

The Court: Well, upon further reflection, I believe that it is the right of a party to withdraw the question and the answer to that question. It is rather unique in my experience, but I believe it can be done. And therefore such may be ordered. It is

(Testimony of Thomas B. Judson.)

not the purpose, counsel, to in this ruling to try and hide anything but to simplify the issues for trial. That is all that we are trying to arrive at here. The principal issue here is whether or not the defendant, Haskell Plumbing and Heating Company, is liable for this damage, and if we could save a couple of days time without prejudice and without damage to the substantial rights of the party by not going into repetitious matters that are already before the Court, it seems only in the interest of justice and proper expediency of court procedure if we could use that ruling. If I am [124] wrong I can be corrected, but I do not believe that the rule contemplates cross-examination.

Mr. Bell: All right, Your Honor. I call your attention to the accounting at the bottom of the list there—just a blank statement—Work Clothes \$300.00. On the second page he sues for \$300 for just work clothes. \$300.00.

The Court: Well, now let's see. I believe it is fully explained in item 51 of the interrogatories. Fully explained.

Mr. Bell: Well, I understand, Your Honor, and I don't want to argue with you, but I just want you to understand my theory too, and I am not going to argue with you about it. I think—of course you know that I think you are wrong in admitting them, but I am not going to keep repeating that; but to show you where I think's it's terribly wrong to allow your ruling to stand on a thing like that. That's why I'm calling your attention to it; but I

(Testimony of Thomas B. Judson.)

am not trying to overrule the Court because whatever he says goes, and I have to be bound by it.

The Court: Very well.

Mr. Butcher: I have finished with the witness, Your Honor. He is subject now to cross-examination on the material covered.

The Court: Yes. You may cross-examine, then.

Mr. Bell: As I understand it then, I would not be permitted to go into the value of the items at this time? [125]

The Court: That is correct.

Mr. Bell: All right. Exception.

Cross Examination

By Defense Attorney:

Q. Mr. Judson, is "Tommy" your real name?

A. Thomas is my real name.

Q. Thomas what? A. Thomas Benjamin.

Q. Thomas Benjamin—— A. Judson.

Q. Judson. And where did the name "Tommy" come from, just a nick-name? A. Yes.

Q. When did you go to King Salmon?

A. September 6, 1951.

Q. And you went on the PNA? A. Yes.

Q. I believe you stated, someone met you at the airfield?

A. Thomas Mulcahy, the Haskell Plumbing and Heating foreman.

Q. And you went in a car from there over to the barracks, or was that a Quon-set hut?

A. Quon-set hut, yes.

(Testimony of Thomas B. Judson.)

Q. That was a large Quon-set hut, was it not?

A. Yes. [126]

Q. How many people were staying in this Quon-set hut?

A. Well at that particular time I would say probably fourteen or fifteen men.

Q. And how many plumbers and steamfitters were working on the job?

A. Oh, I'd roughly say twelve or thirteen. There was two pipe liners.

Q. Pipe lighters. Now what are pipe lighters?

Mr. Butcher: Liners.

A. Pipe covers. They cover steampipes and such as that.

Q. Oh these men were covering up steam pipes; they were not plumbers? A. No.

Q. Now were they working for the general contractor on the job or who were they working for?

A. I believe for an asbestos pipe covering—. I don't recall their name.

Q. But they were working for an asbestos company other than the people you were working for?

A. Well they were indirectly under Haskell Plumbing and Heating. They did the whole job, and then some contractor—

Q. Now you say they did the job; how do you know that, Mr. Judson?

A. Well I don't know it; it is common procedure.

Q. Well, you don't know whether Haskell Plumbing and Heating [127] Company or F. M.

(Testimony of Thomas B. Judson.)

Haskell or who it was did the job; personally you don't, do you? A. No, I don't.

Q. Now, you went there and worked for somebody named Haskell, as far as you know?

A. Haskell Plumbing and Heating Company.

Q. Now did you have any other agreement with Haskell Plumbing and Heating as you say, other than the written contract that was introduced here this morning? A. No, not that I know of.

Q. And you just went to work there as a journeyman plumber and received pay for your time?

A. Yes.

Q. Now where did you eat, Mr. Judson?

A. In a general messhall.

Q. That general messhall was for all employees on the works, was it? A. I believe so.

Q. About how many employees were there working there? A. Oh roughly a hundred.

Q. Well did Gaasland Construction Company have employees there? A. I believe so.

Q. They were the general contractors on the job, were they not? [128] A. I believe so.

Q. And as far as you know if some Haskell—whether it was Haskell Plumbing and Heating or whatever it was—Haskell had plumbing contract separate—as a sub-contract?

A. That had a separate contract and I suppose——

Q. That's the way you understood it?

A. Yes.

Q. Now, when you went there to this place, were

(Testimony of Thomas B. Judson.)

you assigned a bed or something, or did you just pick a cot, and put your stuff there?

A. Well, there was three of us and there was more than three empty bunks, and they were made up and we just took them.

Q. You just took the ones that was made up? They were always kept clean and sheets changed by somebody. Were they?

A. By the bull-cook, yes.

Q. And the bull-cook was from the mess house, wasn't he?

A. Well I don't know. They were——

Q. Did you ever see the fellow?

A. I can't recall; no. He was doing his work while we were out on the construction area.

Q. And you don't know who filled the tank with oil outside for the stove? A. No, I don't.

Q. Did you ever see it filled?

A. I don't recall. [129]

Q. It came in—as I understand it, it came in by pipe-line, from copper line from the barrels out in the yard and connected to the stove inside?

A. Yes, I believe copper tubing.

Q. Now, then all that you know about the fire—the first thing you knew about it—and all you knew about it was that it started while you were away working? A. Yes.

Q. And when you got there it was so hot and burning so hard you couldn't go inside to retrieve your equipment? A. No, sir.

Q. Then you don't know what caused the fire,

(Testimony of Thomas B. Judson.)

of your own knowledge? A. No, I don't.

Q. You don't know who furnished the oil, and who furnished the bunk house and the stoves, do you? A. No, I don't.

Q. How long did you stay there, Mr. Judson, after the fire was over?

A. I left the next day. [130]

* * * * *

GALORD W. WEEKS

was then called as a witness in his own behalf, was duly sworn, and testified as follows:

Direct Examination

By Attorney for Plaintiff:

Q. Will you state your full name?

A. Galord Winfred Weeks.

The Court: Did you get that, Miss McDonnell?

Reporter: Galord Weeks?

The Court: Galord.

Q. Are you the Jimmy Weeks that was employed in October of 1951 by the Haskell Plumbing and Heating Company? A. Yes.

Q. And you are sometimes known as "Jimmy"?

A. Yes, sir. [131]

Q. Are you the same Jimmy Weeks who is a plaintiff to an action in the District Court against the Haskell Plumbing and Heating Company?

A. Yes.

Q. Mr. Weeks, what is your occupation?

A. I'm a welder. A pipe welder, for the plumbing and fitting trade.

(Testimony of Galord W. Weeks.)

Q. A pipe welder? A. Yes.

Q. And is that different from a plumber?

A. Well, it comes under the same class—but the work we do, clean pipes, you know.

Q. Are you a member of the Plumbers Local 367? A. Yes. Yes, I am.

Q. And a member in full standing?

A. Yes.

Q. The same rights as all other members?

A. Yes.

Q. Were you a member of that Local in the summer of 1951? A. Yes, I was.

Q. And during the fall of 1951, were you dispatched to a job for the Haskell Plumbing and Heating Company? A. I was.

Q. And do you know the date?

A. It was in June. I think it was June the 10th; I'm not sure. [132]

Q. In June. Do you know if at that time there was any kind of an agreement existing between you—or between your Union and Haskell Plumbing and Heating?

A. Yes, I know they had an agreement drawn up between the Union and the contractor, Haskell.

Q. And did you know that when you became employed that you were working under that agreement? A. Yes, I did.

Q. I'll hand you a document which is marked Plaintiff's Exhibit number 2, and will ask you to identify that slip if you know what it is. What is it?

(Testimony of Galord W. Weeks.)

A. This is a duplicate of a slip that the business agent gives you to go to work.

Q. To go to work? A. Yes.

Q. And what become of the original?

A. Well, I give it to the shop steward when I got down to King Salmon.

Q. You gave it to your shop steward when you got down to King Salmon? A. Yes.

Q. Who was that shop steward?

A. Mike Cullinane.

Q. You don't know what he did with it?

A. No, I don't.

Q. You did then go to King Salmon to work for Haskell Plumbing [133] and Heating Company?

A. Yes.

Q. What day did you go over there?

A. June the 19th.

Q. June the 19th?

A. —I think. Yes, sir.

Q. Did you remain there throughout that summer? A. Yes, I did.

Q. The summer of 1951. Is that correct?

A. Yes.

Q. You remained there steadily throughout that summer? A. Yes.

Q. And were you there in October?

A. Yes, I was.

Q. Now, calling your attention to the time you arrived there—calling your attention to prior to the time you left Anchorage, was there some arrangement made for your transportation?

(Testimony of Galord W. Weeks.)

A. Yes, that was all made by the Union, who took care of that. All we had to do was to go down and pick up our airplane tickets, and they told us when we could go down there by airplane.

Q. And you were informed? A. Yes.

Q. And did you take care of that—gear and personal property [134] with you?

A. Yes, I did.

Q. Now—you were then flown to King Salmon?

A. Yes.

Q. Now when you arrived at King Salmon, what happened?

A. Well the foreman picked me up and took me up——

Q. What foreman? A. Tommy Mulcahy.

Q. He was the foreman for who?

A. For Haskell Plumbing and Heating, and he took us up to the barracks and showed us where we should stay.

Q. Took you up to a barracks? A. Yes.

Q. And showed you where you were to stay?

A. Yes.

Q. By that last statement, do you mean showed you where you were to sleep or just the building?

A. Showed me where I was to sleep—where the rest of the boys was staying.

Q. In other words he assigned a bunk or bed to you? A. Yes.

Q. Now were you able to find a place for your gear in that building?

A. Yes, there were hooks, and you had a suit-

(Testimony of Galord W. Weeks.)

case you could put under your bed; and hang it up, and someone made a box [135] for us to put our stuff in.

Q. And you were working there October 11, 1951? A. Yes, I was.

Q. What kind of work, and where were you working on that day?

A. Well on that day I was working on the job —when the fire took place.

Q. Where was the job?

A. Well, it was better than a mile from the bunk house.

Q. Better than a mile from the bunk house?

A. Yes.

Q. And did anything unusual happen on that day? A. Yes.

Q. What happened?

A. Well, the barracks burned down.

Q. How did you learn about it?

A. Tommy Mulcahy told us.

Q. Tommy Mulcahy told you? A. Yes.

Q. And did you go to the scene of the fire?

A. Yes, I did.

Q. What did you see when you got there?

A. I didn't see nothing but flames of the building.

Q. Did you find any opportunity of getting your personal possessions? A. No, I didn't. [136]

Q. The fire was too far advanced?

A. Yes.

(Testimony of Galord W. Weeks.)

Q. Did you remain there for any period of time after the fire?

A. Well, I think it was a day or two days after the fire.

Q. Then what did you do? A. Well?

Q. Then, what did you do?

A. Well, we worked one half a day I think.

Q. Did you leave King Salmon, then?

A. Yes.

Q. And where did you go?

A. Come back to Anchorage.

Q. Now, while you were located there, and working for Haskell Plumbing and Heating Company, who paid your wages?

A. Haskell Plumbing and Heating.

Q. And who provided your housing, if you know?

A. Well, Haskell——

Mr. Bell: Now I object to that—unless he knows.

Mr. Butcher: I asked him “if he knew.”

Mr. Bell: If he knows—all right.

The Court: You may answer.

A. Haskell Plumbing and Heating, as far as I know.

Q. And who provided your food, if you know?

A. That was took care of by Haskell. [137]

Mr. Butcher: That’s all.

The Court: You may cross examine.

* * * * *

(Testimony of Galord W. Weeks.)

Cross Examination

By Defense Attorney:

Q. What kind of work did you say you were doing over there? A. I was a pipe welder.

Q. Now that's not plumbing, is it?

A. Well no. It comes under the same heading. We belong to the same Local—the same Union. We can work as plumbers—welders—or fitters.

Q. I see. Now you say you went over there June 10, 1951?

A. It was in June sometime. I don't know the—

Q. What plane did you ride? What airline company?

A. Well, I don't know for sure, but I thought it was a Consolidated plane.

Q. You thought it was with the Consolidated?

A. Yes.

Q. Now did you ever see the contract entered into between the plumbing company—or I mean the Plumbers' Union and the Haskell people. Did you ever see that contract?

A. Well I can't recall I did.

Q. You told Mr. Butcher, I believe—or he asked you if you knew there was such a contract—and you told him you did; now how did you know that?

A. Well I know that we have an agreement—contract written [138] up every year.

Q. With the general contractors?

A. No, with the sub-contractors.

Q. With the sub-contractors? A. Yes.

Q. And you don't know then, of your own per-

(Testimony of Galord W. Weeks.)

sonal knowledge,—you didn't know what that contract contained, did you?

A. Well no, I didn't know what—all it contained, but I know some of what it contained.

Q. Well, you never saw it and yet you knew what it contained. Is that what you want to say?

A. I don't follow you there.

Q. Well, you never did see the contract, did you?

A. Well, I never did see the original contract, but I had seen a copy of it.

Q. Well, where did you see a copy of the one that was entered into in 1951?

A. Well, we have one on the job.

Q. Did you see it? A. Yes, I have.

Q. What did it say?

A. Well, I can't remember what it says now.

Mr. Butcher: (interposing) Now, just a moment——

The Court: Just a moment.

Mr. Butcher: Your Honor, the contract speaks for itself. [139] This man is not expected, and cannot and should not be expected, to say what the contract says, or we would be here all day.

The Court: Yes. I do not think that question can reasonably be answered; if you intend that he should recite everything that the contract says.

Mr. Bell: Well, if he——

The Court: ——The question is hardy proper.

Mr. Bell ——just tell us something in it so that we think that maybe he did see it.

(Testimony of Galord W. Weeks.)

Mr. Butcher: Counsel can ask leading questions. Let him call his attention to that, if he wants to.

The Court: Possibly, or counsel may ask whether he recalls any particular subject of the contract. That would be——

Mr. Bell: Well, do you remember any particular subject in that contract?

Witness: Well, one particular thing I know is in there: Board and room is in there—to be furnished by the company, and we should be paid whatever date is set—on a certain day of the week.

Q. (By defense attorney) Now, then the board and room; they had to pay for that for you wherever you went? A. Yes.

Mr. Butcher: Now—— [140]

Mr. Bell: Now, let him answer. Now I'm cross examining, Mr. Butcher.

Mr. Butcher: Do you object to me making objections, Mr. Bell?

Mr. Bell: No, I don't want you to tell the witness what to say.

Mr. Butcher: I'm not telling the witness what to say. (To Court) Mr. Bell, in asking the question, misquotes the evidence——

The Court: Yes?

Mr. Butcher: ——he assumes a fact that isn't in evidence; and I object to that, Your Honor.

The Court: Well, I do not think it was his intention. What Mr. Bell asked was "Did the company pay for his board and room." Probably what you meant to say was "furnish"; is it not?

(Testimony of Galord W. Weeks.)

Mr. Bell: The contractor did pay for it.

The Court: Mr. Weeks, did you find such a reference in your contract?

(Mr. Bell and Mr. Butcher examining document.)

Mr. Bell: Now, is this the part that you——

Mr. Butcher: Now, Your Honor, I would request that the last question be answered. His question “whether it was paid for or furnished.” And counsel has said the contract said, “paid for”.

The Court: Well, do you wish to withdraw that last [141] question which was not answered?

Mr. Bell: Yes, I withdraw it——

The Court: Very well, and we will start over again.

Q. (By defense attorney): ——to save time. Now, do you remember that the employers were to furnish you board and room, or were to pay board?

A. Well, I understood it was to be furnished.

Q. Well didn't you stay at the Skytel part of the time? A. No, I didn't.

Q. Do you know whether or not other plumbers did stay up there? A. No, I don't.

Q. Well, when you first went there, were the plumbers eating at the mess house at that time?

A. Yes, they was.

Q. Do you know when they started eating at the mess house? A. No, I don't.

Q. Had they been, so far as you know, eating at the Skytel or——was that the name of that place?

(Testimony of Galord W. Weeks.)

Skytel? What was the name of that eating place, there?

A. Well I can't recall. I think that's the name of it.

Q. Well it was "sky" something wasn't it?

A. I think so.

Q. Now do you know that the plumbers had been eating up there? A. No, I don't. [142]

Q. Not while you were there? A. No.

Q. Now, do you know whether or not that if you had wanted to—you could under the rules—they were enforced there—you could have stayed—boarded yourself and drew \$5.75 a day from the company for your own board and room?

A. You mean that——

Q. In other words—say you had your wife with you and you were furnishing your own board and room—would the company pay you \$5.75 a day extra for you furnishing your board and room?

Mr. Butcher: (interposing) I object to questions that are beyond the scope of the contract. This contract is clear enough, and he has stated that he worked under it, and Mr. Bell now is going beyond the terms of the contract and trying to make this witness state something beyond those terms——

The Court: I think that is correct.

Mr. Butcher: ——and asked if he could collect \$5.75 from the company which the contract does not provide——

The Court: That is correct. It is entirely immaterial to the Court whether he could have boarded

(Testimony of Galord W. Weeks.)

some place else or not. What difference can it conceivably make? The question is where did he board—not where could he have boarded.

Q. Now do you know who furnished the food that you ate there?

A. As far as I know it was furnished by Haskell Plumbing and Heating Company. [143]

Q. Now, you do know that the boarding house was—the general boarding house, was run by the general contractor, Gaasland Construction Company; don't you?

A. Well, I couldn't say; I have no proof.

Q. But you do know that all the people of Gaasland's employees ate there at the same place you did? A. Yes.

Q. And how many people were employed by the plumbing contractor—or we'll say by Haskell or whatever that name was?

A. You mean on that particular job?

Q. Yes. A. Oh, I'd say ten.

Q. Ten. Now how many ate at that standing room—or bunk—or place they boarded you people. How many ate there?

A. Well, we all ate there as far as I know.

Q. Well, about how many were there altogether? Who ate there?

A. I don't know. There was over a hundred.

Q. Over a hundred.

A. —I'd say.

Q. And——

(Testimony of Galord W. Weeks.)

The Court: May I interrupt, Mr. Bell. What was that name you said—gas-tun-al?

Mr. Bell: Gaasland—— [144]

The Court: Gaasland.

Mr. Bell: Gaasland Construction Company. G-a-a-s-l-a-n-d Construction Company, I believe is the name. I can give you the correct name, Your Honor, I've got it here, somewhere.

The Court: Yes. You refer to the general contractor?

Mr. Bell: Yes, the general contractor. I believe I can give it to you so we won't be confused. I'm confused about it myself. (Searches through file.) Gaasland.—G-a-a-s-l-a-n-d.

The Court: ——double a-s-

Mr. Bell: G-a-a-s-l-a-n-d Construction Company. Company is spelled out.

Q. Now, did you understand the Gaasland Construction Company was the general contractor on the job? A. Yes.

Q. And you did understand that they did the cooking of the food and served to you people?

A. Well, I couldn't say whether they done it or whether it was a sub-contractor. I don't know what.

Q. You don't know who cooked the food?

A. No.

Q. None of you people employed by the plumbing company there cooked it? A. No.

Q. And down there at the barracks where you

(Testimony of Galord W. Weeks.)

stayed—do [145] you know who furnished the oil down there? A. Well, no I don't.

Q. You never did see them put the oil in the barrels? A. No.

Q. Do you know who owned the Quonset hut?

A. No.

Mr. Bell: I think that's all. [146]

* * * * *

LYLE WESLEY FRANZ

was then called as a witness in his own behalf, was duly sworn, and testified as follows:

Direct Examination

By Attorney for the Plaintiffs:

Q. Well you state your full name to the Court?

A. Lyle Wesley Franz.

Q. Mr. Franz, are you the "Ole" Franz who is a party to a lawsuit against Haskell Plumbing and Heating Company? [147] A. Yes.

Q. And what does the name "Ole" signify or mean? A. It's just a nickname.

Q. It's just a nickname. In other words you answer to that name? A. Yes.

Q. This person listed in this complaint is you?

A. That's right.

Q. Now what is your occupation, Mr. Franz?

A. Steamfitter and plumber.

Q. And how long have you been a steamfitter and plumber? A. About twenty years.

Q. In the various fields of plumbing?

A. Yes.

(Testimony of Lyle Wesley Franz.)

Q. You served an apprenticeship?

A. Yes.

Q. And you are now a journeyman?

A. Yes.

Q. Are you a member of Local 367?

A. Yes, I am.

Q. Were you a member of that Local in the summer and fall months of 1951? A. Yes.

Q. And during the summer and fall months of 1951, did you have occasion to become employed as a plumber by the Haskell Plumbing and Heating Company? [148] A. I did.

Q. Will you state the circumstances, if you recall them, as to how you came to be employed by that organization?

A. The business agent notified that he wanted to see me and he told me——

Mr. Bell: I object to what he told you——

A. He gave me a dispatch.

Q. He gave you a dispatch. And to whom was that dispatch directed?

A. Haskell Plumbing and Heating.

Q. I'll hand you Plaintiff's Exhibit Number 2, and ask you if you can identify that slip?

A. That's a duplicate of the dispatch I took to King Salmon—Haskell.

Q. You had the original of that at one time in your possession? A. Yes.

Q. And what did you do with the original?

A. Gave it to the shop steward.

Q. And the shop steward was, who?

(Testimony of Lyle Wesley Franz.)

A. Michael Cullinane.

Q. You gave that to him at King Salmon?

A. Yes, I did.

Q. Now do you know whether you were working under the terms of a contract? [149]

A. Yes. We were working under a contract.

Q. And do you know what the contract reported—do you know the terms of the contract? Were you familiar with them?

A. Numerous ones, yes. Numerous terms in there.

Q. When you took the job under the terms of that contract, you knew what the conditions were?

A. That's true.

Q. In other words you were going to work? Now, when did you go over to King Salmon?

A. September 6, 1951.

Q. And how did you go over there?

A. Plane.

Q. And you took your personal property with you, is that correct? A. True.

Q. When you arrived at King Salmon, what happened?

A. I was met at the airport by the plumbing foreman, Tommy Mulcahy,—

Q. The plumbing foreman for who?

A. Haskell Plumbing and Heating.

Q. And you were met by him? A. Yes.

Q. Did he direct you in any manner to your barracks?

A. He took us to the barracks.

(Testimony of Lyle Wesley Franz.)

Q. He took you to the barracks. And what happened after you got to the barracks? [150]

A. Well I was assigned a bunk. I don't know whether I was assigned one or picked one out, and the following day went to work.

Q. All right with reference to the barracks, who furnished the barracks, if you know?

A. Haskell Plumbing and Heating.

Q. And did Haskell Plumbing and Heating also furnish your food? A. Yes.

Q. The following day you went to work in your capacity as a plumber? A. That's true.

Q. And you were paid for that work?

A. Yes.

Q. And you were paid by whom?

A. Haskell Plumbing and Heating.

Q. Following your—oh, just a moment. Back to the barracks again, did you, in addition to a bed in there, have storage space?

A. Yes, the person who had the bed before me built a wardrobe. So I had the wardrobe and floor space.

Q. What other facilities were in this barracks besides the bed and storage space?

A. There was a bathroom, hot water tank, and space heating stoves. [151]

Q. Space heating stoves. What type do you know?

A. Well the space heating type; I don't know the particular brand.

Q. Where were they located, do you know?

(Testimony of Lyle Wesley Franz.)

A. Well they was more or less equally distributed in the barracks. One on each end.

Q. One on each end.

A. Close to each end.

Q. And do you know—have any knowledge—as to what kind of fuel was used? A. Yes, I do.

Q. What kind of fuel was used?

A. Diesel fuel.

Q. Diesel fuel. Now calling your attention to October 11, 1951, did anything unusual happen that day?

A. Yes, that was the day of the fire. The barracks was burned up.

Q. How did you learn about the fire?

A. Well, we first seen the smoke and about that time the foreman run over with the—in the truck and said “jump in, our barracks is on fire.” And we went down to the fire and——

Q. How long did it take you to get back when you received that message?

A. Oh, I would say approximately ten minutes at the most.

Q. And when you got back what was the condition of the fire? [152]

A. It was raging.

Q. Was there any opportunity for you to enter the building? A. Impossible.

Q. The fire had advanced too far?

A. Yes.

Q. And after the fire had burned itself out, were you still there? A. Yes.

(Testimony of Lyle Wesley Franz.)

Q. And did you make any investigation as to the cause of the fire? A. No.

Q. Did you continue to work down there or did you return?

A. I returned to Anchorage.

Q. You returned to Anchorage. How soon afterwards?

A. The following day, we couldn't get out; we couldn't have a reservation on the plane until two days following the fire.

Q. Did you, after the fire was over, observe either of the two stoves? A. No, I did not.

Q. You stated in answer to one of my questions that they used Diesel fuel?

A. Yes. It was Diesel fuel with gasoline added to it.

Q. Diesel fuel with gasoline added to it?

A. Yes. [153]

Q. Don't they normally use what they call "fuel oil" in those kind of stoves?

A. Fuel oil and stove oil. Stove oil we should have had.

Q. And you state they were using diesel oil?

A. That's true.

Q. —to which they had added gasoline?

A. That's true.

Q. How do you know that?

A. I seen the bull cook, or whatever he was, put it in one day. He was filling the barrels. I went back to the barracks one afternoon, I run out of cigarettes, and went back to the barracks and he was

(Testimony of Lyle Wesley Franz.)

filling the tanks while I was there, and I stopped and talked to him and watched him fill the tanks.

Q. And what was he doing?

A. He was filling the tanks.

Q. And what was he putting in the tanks?

A. Well, he had a pump and he pumped in diesel oil, and then out of another barrel he pumped in gas.

Q. Did you call his attention to the feature of that?

A. Yes, and he said, "we are hoping this will stop the stoves carboning up like they have been carboning up."

Q. You called his attention to the fact that he was mixing gasoline with fuel oil? A. Yes.

Q. Now, I don't want you to tell me what he said. Did you go any further than that; did you point out anything to him?

A. Well, I pointed out it was a poor practice.

Q. For what reason?

A. Gasoline and fire doesn't mix too well. If they happen to not mix too well and had to settle, the gasoline would hit that stove straight. It is very possible it could cause an explosion.

Q. And I believe you said you called that to his attention——

Mr. Bell: Now, I object to leading the witness.

A. Yes, I called it to his attention.

The Court: Well, it is repetitious.

Mr. Bell: Very leading. It has all been asked and answered.

(Testimony of Lyle Wesley Franz.)

Q. And did he satisfy you that it was a safe practice?

Mr. Bell: I object to that. He is calling for a conclusion of a witness. "Whether he satisfied him."

Mr. Butcher: Well, I'll withdraw that question.

Q. Did you call it to any one else's attention?

A. Yes, I called it to the superintendent of Haskell Plumbing and Heating's attention.

Q. Who was he? A. Jules Ferer.

Q. Now, did you point out anything to him about that practice? [155]

A. Well, I told him I couldn't recommend that kind of practice.

Q. Now, don't say what he said, but so far as you know, did they change their procedure?

A. I don't believe so; I don't know.

Q. Now, did you tell any one else besides Jules Ferer?

A. Yes, I told the shop steward.

Q. And who was the shop steward?

A. Michael Cullinane.

Q. Michael Cullinane. You know you told him? And do you recalling telling anybody else?

A. Well, it caused quite a discussion, and I guess I told everybody.

Q. You recall talking it over with your fellow employees; is that correct? A. Yes.

Q. Now, during all the time that you were at King Salmon employed by the Haskell Plumbing

(Testimony of Lyle Wesley Franz.)

and Heating Company, you received a salary for your work? A. Yes.

Q. And who paid you that salary?

A. Haskell Plumbing and Heating Company.

Mr. Butcher: I think that's all.

The Court: You may cross-examine. [156]

Cross-Examination

Questions by attorney for defense:

Q. How old are you Mr. Franz?

A. 37.

Q. What? A. 37.

Q. And you've been a member of the Plumbers' Union 20 years?

A. I didn't say that, sir.

Q. Well, you've been a journeyman plumber 20 years, you said.

A. I've been at the plumbing business possibly 20 years.

Q. Did you ever work at anything else in your life?

A. Yes. Off and on in between, yes.

Q. Where do you live now?

A. Westward Hotel in Anchorage.

Q. You are stopping here now?

A. That's right.

Q. Where is your home?

A. Wherever I stop, sir.

Q. Where did you leave to come here—from?

A. I happened to be in Seattle, Washington, at that time.

(Testimony of Lyle Wesley Franz.)

Q. Had you been working in Seattle for the last two months? A. No.

Q. What were you doing there? [157]

A. I just arrived at Seattle about a week previously from Haines, Alaska.

Q. Haines. You had been at Haines, Alaska?

A. Yes.

Q. Then you went to Seattle? A. Yes.

Q. Then you came back here and you are stopping at the Westward Hotel for this trial?

A. Yes.

Q. Now did you ever see the contract between the Plumbers Union and Haskell—F. W. Haskell. Wait a moment, I'll give you the name. F. M. Haskell. Did you ever see that contract?

The Court: The contract, I think, is Haskell Plumbing and Heating, signed by F. M. Haskell.

Mr. Bell: F. M. Haskell Plumbing and Heating Company, and operated by F. M. Haskell. (looking at paper)

The Court: Yes.

Mr. Bell: That's why I kept this.

The Court: But you asked him if it was a contract with F. M. Haskell rather than the company.

Mr. Bell: F. M. Haskell Company, by F. M. Haskell. Did you ever see that contract before today? A. Yes.

Q. Where did you see it? [158]

A. Well, I seen that contract about the time it was being signed or shortly after.

Q. Who——

(Testimony of Lyle Wesley Franz.)

A. And I've seen many copies of it.

Q. Who else signed this contract?

A. Sam Ogle, a representative of our Local Union.

Q. And did you know anything about the terms of that contract? A. Yes.

Q. Were you on the board that made the agreement? A. No.

Q. Then you don't know when it was executed, do you?

A. Not the exact date. I read it many times.

Q. Have you got a copy of it?

A. Yes, I have.

Q. With you? A. No.

Q. Where is it?

A. I think you'll find it in my hotel room, sir.

Q. No, I'm asking you. Is it there?

A. I believe so unless it has been misplaced.

Q. Well, did you bring it here with you?

A. Why—a-h—there are numerous articles. I can't—

Q. What?

A. There are numerous things that I don't look at every day [159] and I lose half of them in the shop.

Q. You don't know whether you brought it here with you or not? A. No, I don't.

Q. Was the one you have signed?

A. No, it isn't. It's a blank.

Q. So, as far as you know there's no—well

(Testimony of Lyle Wesley Franz.)

whose name is mentioned in the head of the contract that you have?

Mr. Butcher: Now, Your Honor, I object. The contract speaks for itself. The witness has stated that he knew some of the conditions, he didn't state that he knew them all.

The Court: Well, he is testing his memory as to whether he knows the contents of the contract or some of its terms, and it is therefore permissible cross-examination.

Mr. Butcher: Well, it is all right, Your Honor, to ask him some of the terms, but he is asking whose name appears at the top of the contract——

The Court: Well——

Q. (By defense attorney): Who is the contract headed by; what company's name is at the head of it, if you know?

Mr. Butcher: I object on the grounds that it is improper cross-examination.

The Court: Well I think it——

Mr. Bell: (interposing) I've done it many times—— [160]

The Court: It is proper cross-examination, although the Court would not be too much impressed if he didn't know the name of it. This long name of this employers' association. You may answer, although it is rather immaterial to me.

A. Well the name of the contractors—I mean that's something you always skip over, just like the small print and everything else; you just skip over

(Testimony of Lyle Wesley Franz.)

it; the formalities and preliminaries. But it represents the Plumbing Contractors and Local 367.

Q. (By attorney for defense): Did you know that the Haskell Plumbing and Heating Company's name was not mentioned in the contract, at all?

A. It is a plumbing association which includes all contractors.

Q. You understood, then, that the Haskell Plumbing and Heating Company's name was not mentioned in the contract any place?

The Court: Well that—certainly the Court will sustain an objection to it because the contract itself is to the contrary. It is expressly signed by Haskell Plumbing and Heating Company, by F. M. Haskell.

Mr. Bell: —the name.

The Court: Your question was—"Did you know the name doesn't appear at all?" and that is not the fact, Mr. Bell. [161] The name does appear, if you will examine the last page.

Mr. Bell: No, sir, the name is not on the face——

The Court: I beg your pardon; it is on the last page.

Mr. Bell: It is not in the context of the contract at all.

The Court: You didn't say that. You said: "Did you know that it doesn't appear at all?" and that is not correct. The question is improper.

Mr. Bell: Let me ask it again. Did you know that the Haskell Plumbing and Heating Company's

(Testimony of Lyle Wesley Franz.)

name did not appear in the body of the contract anywhere? You read it many times, you said?

Witness: Yes.

Q. (By attorney for defense): Now, did you know that the name Haskell Plumbing Company nowhere appeared in the body of the contract?

A. There is no individual plumbing contractor's name listed in the body. It is the signature at the end that counts.

Q. And that's all then. Do you know who signed it at the bottom? A. Yes.

Q. Were you there when they signed it?

A. Well, I don't believe it would support me.

Q. Are you a married man? A. No. [162]

Q. Where were you at the time you started to go to work for the—on this job? Where did you hire at—where were you hired from?

A. Anchorage.

Q. Had you been here for some time?

A. Yes.

Q. Where did you eat over there?

A. I ate in the messhall, furnished at the camp site.

Q. It was some hundred yards or more from where you slept; was it not?

A. Approximately.

Q. And that was being furnished by the Gaasland Construction Company; was it?

A. My room and board was furnished by Haskell Plumbing and Heating.

(Testimony of Lyle Wesley Franz.)

Q. Well, you mean it was paid for by them, do you?

Mr. Butcher: Now, Your Honor, I object——

Mr. Bell: Let him answer, please.

The Court: Oh, I think that is proper cross-examination. He may answer. And it is material.

Q. (By attorney for defense): You mean Haskell Plumbing and Heating Company was paying for your board?

A. According to their contract, they had to pay for it or trade for it in some fashion.

Q. Now, you ate then there where the other people ate at [163] the regular dining room or messhall?

A. That's true.

Q. Now who was this fellow that you saw mixing this gasoline and oil?

A. I do not know.

Q. What kind of a looking fellow was he?

A. Oh, that's been sometime ago, I wouldn't attempt to describe him.

Q. Well, was it a man or a woman?

A. It was a man.

Q. How old? Would you say?

A. I never looked that closely at the man.

Q. Was he gray-haired or was he a young man?

A. I didn't look that closely at the man.

Q. Well, would you say he was twenty or fifty years old?

A. Possibly somewhere in between one of those, or maybe——

(Testimony of Lyle Wesley Franz.)

Q. Maybe under or over? A. Could be.

Q. Yes. And why didn't you tell your counsel about the seeing of the mixing of this stuff before today? A. I did.

Q. Did you answer a set of interrogatories?

Mr. Butcher: Now, Your Honor, I object. This man did answer it in the interrogatories. It has been available to Counsel—— [164]

Q. Let me see the interrogatories. I haven't got a copy of the answers.

The Court: Very well, we shall have a look. It may be used for this purpose. Let's see.

Mr. Butcher: The last answer, Your Honor——

The Court: The last interrogatory. (The Court looks through a file.) Yes he made it, and I'll call attention to question 51.

(Mr. Bell took the file.)

Mr. Bell: I will bring it back to you.

Q. (Attorney for the defense): Now, I will ask you how you knew that they were using diesel oil instead of stove oil, as you stated in interrogatory number 51? A. I seen it.

Q. And you can tell the difference by looking at oil whether it is diesel oil or stove oil?

A. It was stamped on the barrel "Diesel Oil."

Q. Well, you've seen oil delivered in barrels stamped "gasoline" too, haven't you? When it wasn't gasoline? A. No, I haven't.

Q. You never did see that? Now, how do you know it was gasoline that he put in it?

(Testimony of Lyle Wesley Franz.)

A. Well, I could see the gasoline being pumped in there.

Q. And how much gasoline did he put in?

A. He said he was going to try and put in about 5 gallons. [165]

Q. And how many gallons of Diesel oil did he put in?

A. It was a 55 gallon barrel; probably 50 gallons.

Q. And he told you he was going to put 5 gallons of gasoline in it? A. Yes.

Q. Now what date was it that you saw him doing this?

The Court: Just one thing there, Mr. Franz. Instead of nodding your head, would you give an audible answer because sometimes the reporter doesn't catch that.

A. Certainly.

Q. Now, what day was it you went after the cigarettes?

A. I would say the first part of August—the first part of October. Pardon me.

Q. And they had a 50 gallon barrel at the time there, and connected to the stoves, did they?

A. Yes.

Q. And this man was filling that 50 gallon barrel?

A. There was more than one 50 gallon barrel on the stand. I forget, I believe there was three.

Q. And were they all fastened together or not?

A. Yes. They was hooked up together.

(Testimony of Lyle Wesley Franz.)

Q. Do you know who that fellow was that you saw around the place. You don't know what his name was—— A. No——

Q. Do you know any connection he had there?

A. No, I don't.

Q. Had you ever seen him before? A. No.

Q. Had you ever seen him around the cooking place—or the eating place?

A. Not that I remember of.

Q. You just happened to see him that one time there? A. That's true.

Q. Now what—Excuse me, Your Honor, I will pass this right back. (Gave file to Court.)

The Court: You may keep it if you wish.

Mr. Bell: No, thank you.

Q. (By attorney for defense): When you ate there, you ate with about a hundred or a hundred and fifty people there, did you not?

A. Possibly. I suppose, yes.

Q. After you saw this then, you went right on staying in the place; after you knew this was a dangerous process, you went right on staying there, did you? A. Yes.

Q. And you told the job steward, and you told other people about this dangerous system, did you?

A. Yes.

Q. And then you kept right on staying?

A. Yes. [167]

Q. You knew it was very dangerous, didn't you? To mix gasoline with oil and for a stove?

A. Yes.

(Testimony of Lyle Wesley Franz.)

Q. You knew it was very dangerous, didn't you?

A. Yes.

Q. And you went on and stayed just the same?

A. Yes.

Q. Where did you stay after the fire?

A. We moved into another barracks.

Q. Where was the other barracks?

A. Well, in the same area.

Q. There was a lot of barracks there, were there not?
A. True.

Q. And did you know the Gaasland people—
Gaasland Construction Company?

A. Not personally. No.

Q. You knew they were the general contractors
on the job?
A. Yes.

Q. And of course when that barracks burned,
they took you to some place else to stay, did they?

A. Yes.

Q. Was it a similar barracks?

A. Somewhat similar.

Q. Now, why do you say this was a bull cook
that you saw mixing that? [168]

A. I don't recall saying he was a bull cook. I
said he could have been a bull cook. I do not know
what he was.

Q. You don't know whether he was a bull cook
or not?
A. No, I don't.

Q. I see. You say you went after these cigar-
ettes about October first?

A. The first part of October, yes.

Mr. Bell: All right, that's all.

(Testimony of Lyle Wesley Franz.)

The Court: May I ask a question. Do you know, Mr. Franz, just what is the function of a bull cook?

A. Well, they ordinarily make beds and do janitor work.

The Court: So they are not cooks?

A. Oh, no.

The Court: That is what I had in mind.

A. Not in my opinion.

The Court: They are sort of a steward, in a way?

A. They could be.

Redirect Examination

By attorney for the plaintiff:

Q. Mr. Franz, in your conversation with the bull cook, after you called his attention, as you said, to the fact of this dangerous practice, did he satisfy you that it was not? A. No. [169]

Q. Did he make any statement to you that it was not dangerous?

A. They was working on a theory, to my way of understanding it, to see whether it would work.

Q. Who was working that out?

A. I don't know who he was working for. If he was working for Haskell or Gaasland. I don't know who he was working for. I don't know.

Q. Did you have enough conversation with him to ascertain whether he was doing it on his own volition or under——?

A. No. It was my understanding he had been told to do that.

(Testimony of Lyle Wesley Franz.)

Q. And you gleamed that from your conversation? A. Yes.

Q. And when you talked to the superintendent, did the superintendent satisfy your fears about it?

A. He said he would see what he could do about it.

Q. And on that assurance you went back and stayed in the barracks? A. That's right.

Q. Now, calling your attention to the question Mr. Bell put to you, as to whether under the terms of the contract the Haskell Plumbing and Heating had agreed to pay for your board and room, you stated "yes" to that, did you not?

A. Yes.

Q. Now, I want to call your attention to paragraph 6 on [170] page 5 and ask you to read that paragraph. Read it carefully.

(The witness complied with the request of counsel.)

Is that paragraph, which provides that Haskell Plumbing and Heating Company agree to pay for your board and room?

A. They agree to furnish the board and room.

Q. They agree to furnish. Now is that what they agreed to under the terms of this contract?

A. That's true.

Q. Is that your testimony, now? A. Yes.

Q. When you stated that they agreed to pay for it, that was not correct?

Mr. Bell: I object to leading this witness. He is a very intelligent person and——

The Court: Well, the question is answered.

Mr. Butcher: I'm sorry.

The Court: Yes. It was rather leading—but rather harmless.

Any further questions, Counsel?

Mr. Bell: Nothing on my part.

The Court: That is all then, Mr. Franz.

Now, I expect that that should conclude our work for the day. We will resume this tomorrow morning, and try to make some disposition. It is quite likely that we would not conclude this matter by noon tomorrow, and it may be that we [171] would have to interrupt for parties that are to be here from Seward, that we may have to hear for a couple of hours, and then an injunction matter at three. So we will see how it develops. I am sure we can work through the morning anyhow.

Mr. Butcher: Well, if it will help, Your Honor, I have two more witnesses—the plaintiffs themselves—and I may call one other witness very shortly to establish a disputed point, and that will be about my case as far as direct evidence is concerned.

The Court: We will resume then at 9:30 o'clock in the morning and adjourn court until the same time.

The court adjourned at 4:50 p.m.

(At 9:30 a.m., the following day, January 6, 1955 the case of Weeks vs. Haskell continued in session.)

The Court: We will continue with the trial this

morning in the case of Weeks vs. Haskell Plumbing and Heating Company. The plaintiffs may call their next witness.

Mr. Butcher: Call Mr. Cullinane.

MICHAEL CULLINANE

was then called as a witness in his own behalf, was duly sworn and testified as follows:

Direct Examination

By attorney for the plaintiffs: [172]

Q. Will you please state your full name?

A. Michael Emmett Cullinane.

Q. Are you the Mike Cullinane that is a party in action A-7736 against Haskell Plumbing and Heating?

A. I am.

Q. And what is your occupation, Mr. Cullinane?

A. I am a steamfitter.

Q. And how long have you been a steamfitter?

A. I finished my steamfitter's apprentice course in 1948.

Q. And you have been doing that type of work since that time?

A. Yes, I have.

Q. Are you a member of the Plumbers and Steamfitters Local number 367?

A. I am.

Q. That's the Anchorage Local?

A. That's right.

Q. And where does it normally cover? Jurisdiction over?

A. In the Anchorage area, and outlying limits. The parallels and whatnot, I am not sure of. But

(Testimony of Michael Cullinane.)

they do have jurisdiction of the King Salmon area.

Q. Were you a member of that Local 367 in the summer and fall months of 1951?

A. I was.

Q. And were you, at one time or another, during those months, [173] dispatched by your Union to work for Haskell Plumbing and Heating?

A. Yes, I was.

(Mr. Butcher to Clerk) May I have the dispatch slip there? (It was handed to him.)

Q. I hand you Plaintiff's Exhibit number 2, and ask you if you can identify that? Statement?

A. Yes, I can.

Q. What is it?

A. This is my dispatch slip—a duplicate of my dispatch slip—that was made out to go to the Haskell Plumbing and Heating job at King Salmon.

Q. And where is the original of that slip, if you know?

A. The original of that slip was burned up in the fire in October of '51 at King Salmon.

Q. Were other slips covering other plumbers turned over to you at that job?

A. Yes, they were.

Q. Were you what is known as the job steward?

A. At the time of the fire I was the job steward, yes.

Q. At least sometime while you were working for the Haskell Plumbing and Heating Company, you were the job steward? A. That's correct.

Q. And previous witnesses have testified, upon

(Testimony of Michael Cullinane.)

their arrival at King Salmon, *they* they turned over to you their dispatch slips? [174]

A. That's right.

Q. That is right. And those dispatch slips were kept by you and were destroyed later?

A. Destroyed in the fire, later.

Q. Now, when did you hire out for Haskell Plumbing and Heating—when were you dispatched over there?

A. July 15, of 1951.

Q. And did you go immediately over there?

A. Whether I left on the plane the 15th or 16th, I'm not sure, but I left within a day or so; whenever the airlines made a reservation and the plane was going out and whatnot. I was the——

Q. What airlines did you go on?

A. I went from Anchorage to King Salmon on Northern Consolidated Airlines.

Q. And was your transportation arranged for?

A. It was taken care of by the Union.

Q. It was taken care of by the Union?

A. We went down and picked up the tickets—ticket at Northern Consolidated Airlines, and reservation and whatnot and traveled from there.

Q. The reservation and those arrangements were made for you by the Union. Is that right?

A. That's right. [175]

Q. And you took your gear with you?

A. Right.

Q. Now, when you got over there, what did you do?

(Testimony of Michael Cullinane.)

A. Well, we were met at the airport by a Mr. Muleahy who was the Plumbing foreman for Haskell Plumbing and Heating——

Q. And Mr. Muleahy is also a party to the suit?

A. That's correct. And he took us to the quarters—our barracks, which Haskell Plumbing and Heating had for their plumbers and steamfitters, and there was a bed made up and we unloaded some of our gear and unpacked some of our work clothes for the next day's work.

Q. And then, from that time on until October 11th, you say that you worked steadily for Haskell Plumbing and Heating Company?

A. That is correct.

Q. And who paid your wages to you?

A. Haskell Plumbing and Heating Company.

Q. And was food provided for you—your meals?

A. Our food and lodging was furnished by Haskell Plumbing and Heating Company; that's right.

Q. Was there, if you know,—were you working under any kind of an agreement which provided for this?

A. Yes, we were working under the present agreement—I mean an agreement which was signed for that year between Haskell Plumbing and Heating and the Local Plumbers and Steamfitters [176] of Anchorage.

Q. And are you acquainted with that contract; do you know its terms?

A. Yes, I had a blank copy of that contract in-

(Testimony of Michael Cullinane.)

asmuch as I was the steward for reference and whatnot.

Q. So you are familiar with it? A. Yes.

Q. All right now. Are you acquainted with a man by the name of Ben Holbrook?

A. Yes, I am.

Q. And is that the same Ben Holbrook who is a party to this action? A. That's correct.

Q. Was he employed on the same job as you were at King Salmon? A. Yes, he was.

Q. And did he work at that job?

A. Yes, he was on the job.

Q. Do you know, of your own knowledge, whether he was there on October 11th in the capacity of an employee of Haskell Plumbing and Heating Company? A. Yes, I do.

Q. As job steward, you would know that?

A. That is correct.

Q. Where was Mr. Ben Holbrook quartered?

A. Mr. Holbrook was quartered in the same building that we lived in at King Salmon.

Q. Under the same arrangements as you were?

A. That's right.

Q. Will you tell us what happened on October 11th, if you can?

A. Well, we went to work in the morning and returned to the barracks at lunch hour, and returned back to work after lunch; and in the early afternoon—a very short time after we left the barracks, our foreman, Mr. Mulcahy, of Haskell Plumbing and Heating, come around to the power

(Testimony of Michael Cullinane.)

house where I was working and informed us that the barracks was on fire. So we all returned to the barracks to see if there was anything we could possibly do, and when we arrived back at the camp site where the barracks was located, we seen that the barracks was nothing but a flaming mass of flames coming out from the roof and both ends and the sides, and one couldn't enter or attempt to enter or anything of that nature; so we just watched it burn, and that was about it. You couldn't enter it or do anything about it.

Q. You had no opportunity to save any of your personal property?

A. There was no possible chance of entering the building, no.

Q. Now, will you describe the interior of that building?

A. Previous to the fire?

Q. Right. [178]

A. Why it was a—a Quon-set hut with two space heaters, one on each end, and toilet facilities in one section, and the rest was beds with tables between beds and home-made closets, and a shelf over every bed for hanging your clothes and whatnot.

Q. Can you describe the space heaters?

A. Why they were typical home-type space heaters, carburetor fed, float operated and no motors or anything of that nature on each one.

Q. Where were they fed from, if you know?

A. They were fed from outside barrels—from drums which were all hooked together outside the barracks.

(Testimony of Michael Cullinane.)

Q. And can you describe—do you know the name or type of space heater—the manufacturer?

A. No, I do not know the name of that.

Q. You had seen that type before?

A. Yes, I have.

Q. You are familiar with them? A. Yes.

Q. Are they frequently used in camps? For that purpose? A. Yes, they are.

Q. Now, from your own knowledge, what you know yourself, do you know what caused this explosion? If you don't know don't answer, but if you know what caused it, say so.

A. Well I believe that it was—— [179]

Mr. Bell: I object to what he believes.

The Court: Your opinion would not be permissible, at least at this time—what you know.

Q. (By attorney for plaintiff): If you know. If you don't, don't say anything.

A. Well, I don't know.

Q. You didn't make any personal investigation of the interior of that building after the fire?

A. No.

Q. Now you heard Mr. Franz testify yesterday that he mentioned to you that the bull cook was mixing gasoline and Diesel oil and putting it into barrels to be used as fuel for the stoves. Did you hear him so testify? A. Yes, I did.

Q. And did he so mention that fact to you?

A. Yes, he did.

Q. Did you mention that to anyone else?

A. Yes, as job steward I mentioned it to Mr.

(Testimony of Michael Cullinane.)

Cross Examination

By attorney for defense:

Q. Is that Mr. Cul-lain?

A. Cullinane. [182]

Q. What is your real name; Mike is a nickname, is it?

A. Michael Emmett Cullinane is my full name.

Q. I didn't understand you?

A. Michael Emmett Cullinane.

Q. Thank you.

Mr. Butcher: (interposing) Your Honor, may I ask for a half minute? A man whom I must see for just one word walked in. May I have your indulgence? (to Mr. Bell)

Mr. Bell: Sure, go ahead.

(Mr. Butcher returned directly.)

Q. How long were you over there altogether?

A. I arrived in King Salmon approximately the 15th of July, and we left King Salmon two or three days after the fire.

Q. Did you work any more after the fire?

A. Yes, we did.

Q. Now, where did you stay after the fire?

A. In one of the other buildings in the camp site.

Q. About how many of those Quon-set huts and buildings were there?

A. I don't understand the question——

Q. Well, maybe I didn't make it clear, Mr. Cullinane: Were there a large number of those Quon-set huts there on the grounds at the place?

(Testimony of Michael Cullinane.)

A. There were several Quon-sets and various types of camp buildings there. [183]

Q. Approximately how many? Would you say?

A. Well approximately, I'd say fifteen. I am not sure whether there was more or less.

Q. Were they all equipped about the same way?

A. No, they were not.

Q. How were the others equipped?

A. Well, the others were equipped with just plain space heaters and beds, and shelves over every one of the specific huts and Quon-set huts, but that was all. There was no inside plumbing facilities in each quarters.

Q. But outside of the inside plumbing heating—or plumbing equipment, they were about the same, were they?

A. More or less.

Q. They had those space heaters in them, too, did they?

A. That is correct.

Q. Is that space heater one that has an air chamber between the outer portions of it and the part where the fire is?

A. That's right.

Q. Some people would say air would circulate in at the bottom and out at the top, or something like that, do they? It don't have a fan but it just circulates?

A. I believe that's the theory of it.

Q. Now, on this particular day, what time did you quit work at noon? To go to lunch? [184]

A. Well, under the contract that we work under, to which the out-of-town section applies, we leave

(Testimony of Michael Cullinane.)

the job site in order to be in camp at the time dinner is served.

Q. At twelve o'clock?

A. By twelve o'clock—or if the chow hour is twelve o'clock. I don't recall quite whether it was a quarter to twelve or ten of twelve, but it was—we leave the job site to be in camp by dinner time.

Q. And then you go from there directly to the mess house—or messhall, is it?

A. No, we'd usually go to our quarters and wash our hands, and go over and take our coats off. We usually have a couple of jackets on or something—dirty clothing—then go to the messhall.

Q. Now, when you get over to the messhall, you all eat in the same room—the employees that were working under you, the camp steward, and the others—the multitude of the other employees—they ate in the same place?

A. That is correct.

Q. Then, after you ate your lunch that particular day, I believe you said you returned to the quarters, again? A. That's right.

Q. And do you know how long you stayed there, at the quarters when you returned?

A. On the King Salmon job, we took a hour for lunch, so [185] at the end of the hour, from the time that we arrived back in camp, why we would leave to go back to work. Now, whether it was one o'clock, or ten minutes to one, or five after, I do not know.

Q. And after you did leave you got in cars and

(Testimony of Michael Cullinane.)

drove to the place where you were going to work again?

A. No, we got in the company truck and were driven back to the job site.

Q. Well, company truck. It was a truck and not a car, I mean? A. Right.

Q. Un-huh. Now when you got there, you testified a few moments ago that you had just gotten back and had been there a very short time when the superintendent called you—or foreman, and told you that the barracks were on fire. Is that right? Who did really call you?

A. Mr. Mulcahy who was plumbing foreman for Haskell Plumbing and Heating.

Q. And he's the one called you?

A. That is correct.

Q. And was it just a few moments from the time you got back to the job that he called you and said the barracks was on fire?

A. No, it was half an hour to an hour, as I recall, now; I'm not sure. No one looked at their watch, I don't believe. [186]

Q. Well, wasn't the barracks completely burned down at two o'clock? Completely burned and destroyed by two o'clock?

A. Well, I don't recall. This was four years ago, and the exact time I wouldn't know, but it was in the early afternoon.

Q. You think it was four years ago?

A. I believe it was October 11th, 1951.

Q. That wouldn't quite be four years; that's

(Testimony of Michael Cullinane.)

what I was calling your attention to. Now, when you mentioned this bull cook having been seen mixing gasoline and the oil, did you mention that to Jules somebody, did you say?

A. I didn't mention the bull cook and the oil to Mr. Jules Ferer as having seen it. I mentioned that Mr. Franz had seen this bull cook mixing this oil and gasoline, and reported the incident to Jules to have him do something about it.

Q. Now he was in what capacity there?

A. Why he was the head man—the superintendent—for Haskell Plumbing and Heating.

Q. Well did he have anything to do with anything but the plumbing?

A. I wouldn't know. That's the capacity we were in—plumbers and fitters, and what else, I do not know.

Q. Well he was the superintendent on the works, was he not? [187]

A. I don't know. He was the superintendent on the plumbing and heating.

Q. Well, he was general superintendent over everything there, was he not?

A. No. He wasn't.

Q. Who was the general superintendent, then?

A. As far as I know, the general superintendent of Gaasland Construction Company was a gentleman that died a year or so after that.

Q. Do you remember his name?

A. I recall his first name and I believe it was

(Testimony of Michael Cullinane.)

"Pete." And may have been Jensen, but I am not sure of that.

Q. All right. Now was—you didn't mention this to Jensen, did you?

A. We don't have anything to do with those people. I mean we are——

Q. But did you? A. No.

Q. Un-huh. Now, about what date was it that you mentioned this to this fellow "Jules"?

A. It was right after Mr. Franz reported it, which was around the first of October, as I recall.

Q. Did you ever mention it to him any more after that?

A. No, this Mr. Ferer was a very competent man, to say the least, and when he'd say he'd take care of something, why [188] that was all there was to it.

Q. Then, you are an expert, actually; being a steamfitter and plumber on the handling of connections of all kinds to stoves and plumbing and plumbing equipment, aren't you?

A. I wouldn't say I am an expert. I'd say I connected a lot of connections in regards to pipe work in the steamfitting industry.

Q. Did you ever look to see about the connections to these stoves?

A. Not particularly.

Q. The day that you were in there, and had left, just before this fire, did you see anything different around the place?

(Testimony of Michael Cullinane.)

A. I don't recall having seen anything different.
No.

Q. Were the stoves working all right, so far as you know?

A. I believe they were working quite efficiently.

Q. Now, do you know, of your own personal knowledge, whether there was any further reports about this oil having gasoline in it?

A. No, I do not.

Q. Do you know of any one seeing any person doing that after that date? Did you know of any one who did see them do it after the date that the witness testified to yesterday?

A. No, I do not.

Q. Now this happened ten or eleven days, possibly, after you [189] saw this scene, did it not?

A. That's right.

Q. You remained at the place after you had knowledge of this, did you?

A. That's correct.

Q. Did you ever eat any place over there, other than at the regular messhall?

A. Do you mean that I paid for—or the company furnished?

Q. Well, did you ever, at any time—and then I'll ask you did the company furnish? Did you ever at any time?

A. I believe I had a meal or two down at Sky-motel cafe which we paid for out of our own pocket inasmuch as we had missed regular camp chow—for being late; or we wanted something special.

(Testimony of Michael Cullinane.)

Q. And the food then was put up by the general contractor and served to all of the people that were working there. Was it?

A. I don't know. We ate in their messhall. Who the caterers were, or who they worked for, I don't know.

Q. I believe you said that you understood the terms of the contract, in that the food was paid for by your employer, the Haskell Plumbing and Heating Company. Is that right?

A. I do not know. We don't pay for it, and how they paid for it or any of those arrangements, I don't know. I know that we didn't pay for it as individuals. [190]

Q. Did you know the bull cook there?

A. No, I didn't.

Q. Your sheets and bedding was changed, your beds were kept clean by someone?

A. That's right.

Q. Did you ever see the man that changed the sheets or bedding?

A. No, I didn't; when he was working, we were working out on the job site, and in that way missed each other.

Q. Well, did you know that he worked also in the messhall?

A. I can't answer that. I can't recall if the bull cook was one of the waiters or cooks or what. I don't know.

Q. Would you know him if he was here in the courtroom?

(Testimony of Michael Cullinane.)

A. I believe I would, but I'm not sure.

Q. Do you remember ever seeing him anywhere?

A. I can't recall having seen him since leaving King Salmon.

Q. Well, I mean at King Salmon; do you remember having seen him there?

A. Well I must have seen him; I mean a hundred or a hundred and fifty men in the camp, you're bound to see everybody eventually, but I cannot recall having seen him.

Q. You were there quite a number of months?

A. I was there from July 'til October, yes.

Q. And you didn't see him then mixing any gasoline and oil? [191]

A. No, I did not.

Q. Or rendering any services there?

A. No.

Mr. Bell: I think that's all.

The Court: Any redirect?

Mr. Butcher: No, Your Honor.

Examination by the Court

Q. Do you know whose duty it was—in your lodgings furnished in this manner to which you testified to—to light the fires—or to maintain the fires and stoves?

A. It's the usual duties, as we'd say, of the bull cook; the janitor—the man that sweeps up and cleans up—and takes care of all those things.

Q. That is the usual practice; that is included in the bull cook's duties?

A. Well, yes. Now, in relation to your fires in

(Testimony of Michael Cullinane.)

the fall in your camps, why the stoves are usually going all the time, and usually on filling your oil tanks and duties of that kind why when there's a camp that's spread out why they have a gang or detail that takes care of fueling the tanks and that sort of thing.

Q. Do you recall, then, whether in October at King Salmon, it was necessary to keep fires burning at that time?

A. I am quite sure that it was because we were wearing [192] three or four layers of clothes, you would say. That is long underwear and wool pants and shorts, plus our overalls and a work jacket which when the temperature was down—I don't know, maybe it was ten above or maybe it was zero. It was necessary to keep the fires going at all times in such weather.

The Court: If that opens up any further inquiries, counsel may examine.

Mr. Bell: Yes.

Recross Examination

Questions by attorney for defendant:

Q. Do you know whether you, or any of the men living in the room with you could, if you wanted to, regulate the amount of the heat from that stove. If you could do it? A. No, I don't, actually.

Q. Well, isn't there some kind of a valve on the stove where you can give it more oil or less oil if you want to?

A. Yes, I am quite sure there was.

(Testimony of Michael Cullinane.)

Q. And can you ever remember it being too warm in there, at any time?

A. No, I can't at King Salmon; I can't recall it being too warm in the fall.

Q. Do you remember ever having it too cold and having to turn it up to get more heat?

A. Well as I recall, they were going full force all the [193] time to keep it as warm as possible, and inasmuch as there was quite a bit of open space underneath that created quite a draft on the quarters.

Q. There were just two of those heaters there?

A. As I recall there was one at each end of the hut, plus a water heater in the toilet room.

Q. Well, wasn't there another heater that wasn't in use; another space heater in the Quon-set hut that was not in use at the time?

A. There may have been, but I don't recall at this time.

Mr. Bell: I see. That's all.

Mr. Butcher: Your Honor, my next witness has obtained some photographs and I haven't had a chance to look at them; may I have a moment?

The Court: Indeed you may. I would like before you do that, counsel,—just a moment here—to recall Mr. Judson for a question which the Court would like to ask, if he is present.

Mr. Butcher: Yes.

THOMAS B. JUDSON

resumed the witness stand.

Examination by the Court—(Continued)

The Court: Now counsel may object to this question if you believe it improper, but Mr. Judson, you testified yesterday something to the effect that after this fire that you saw the shell of one of these heaters—stoves, that was split open. I wonder if you could describe that a little more fully to [194] the Court so that we could get that picture a little clearer. Just what the condition was of that heater when you saw it? This I understand was after the fire.

A. (Witness nodded in the affirmative.)

Mr. Butcher: Answer audibly.

A. Yes.

Mr. Butcher: Don't shake your head.

A. Well, I don't have a clear picture of it. As I remember there was a drum laying over there that was split open, with steel and everything laying there.

Q. A drum?

A. It looked like the drum of a heater; yes.

Q. Was this heater of a drum type or erect type such as is used in households?

A. I would say, as I remember the heater—it was a space heater—regular oil stove with a drum casing.

Q. It had a drum casing. Are you familiar with the type that is used in households generally that

(Testimony of Thomas B. Judson.)

has a cabinet shape, and then it has a fire pot, and above that an air space. Was it that type?

A. That was the type. There was absolutely no opening—fan on it or anything else. It was just ordinary.

Q. But the cabinet part of the heater was shaped like a drum?

A. The internal part of it was shaped like a drum, but it was a square. [195]

Q. Oh, the internal part. Yes; the inside of the cabinet, that which contains the heat is a drum shape; is that it? A. That's right.

Q. And that you say you saw lying to one side?

A. As I recall it, yes.

Q. And split open? A. Yes.

Q. What about the other stove; did you notice it?

A. No, I didn't go any farther when I saw——

The Court: Well, thank you. That clarifies the matter.

Mr. Bell: Your Honor, may I ask him another question?

The Court: Yes, you may.

Recross Examination—(Continued)

By Attorney for Defendant:

Q. Had you observed those stoves inside of the outer wall of the stove, prior to the fire?

A. I don't understand your question.

Q. Had you ever looked inside of the outer cover

(Testimony of Thomas B. Judson.)

of this stove, prior to the day the fire took place—before?

A. Well, there was a mesh-lining on the stove; naturally I could see the internal part of it when you'd stand up there and warm your hands, and put your gloves on there once in a while to warm them up a little bit. [196]

Q. And on this particular occasion, you saw something that could have been a part of that stove—afterwards—in your opinion?

A. That's correct.

Q. Now, where was it with relation to where it had been sitting?

A. Well, it was from the front of the barracks—to the left—laying down.

Q. Was that a heavy iron thing—or tin—or metal—sheet metal?

A. Well, as I recall it—it just looked like a drum laying there.

Q. Well, was there any drums—like gasoline drums or anything, inside of the quarters before the fire, that you noticed?

A. Well, I guess not; maybe a trash barrel or something like that.

Q. Trash barrel. And they were made of drums, too, weren't they? A. I reckon so.

Q. Could that, in your opinion, Mr. Judson, been one of those barrels that had formerly contained trash?

A. I guess it might have been.

Q. Did you notice on the day of the fire, when

(Testimony of Thomas B. Judson.)

you were there at noon, whether there was trash in those trash barrels or not? [197]

A. No, I couldn't.

Q. If a cigarette had been thrown in the trash barrels could that have caused the fire, in your opinion?

A. I suppose it could in your opinion; yes.

Mr. Butcher: I call Your Honor's attention to the fact that this witness hasn't answered that question except to say in Mr. Bell's opinion.

The Court: Well, yes. I heard.

Q. Now you—I didn't ask you for my opinion. I wanted to ask you for yours—(laughter). You think it could have happened—a thing like that, don't you? You didn't speak audible so she could get your answer.

Reporter: What is your answer—"Yes"?

Witness: Yes. (Waves hand a little to indicate indecision.)

Mr. Bell: That's all.

Redirect Examination

Questions by Attorney for Plaintiffs:

Q. You are familiar with this type of heater, aren't you? A. Well, yes.

Q. Quite familiar, aren't you?

Mr. Bell: I object to leading the witness.

The Court: That is leading to a certain extent.

Q. Would you say, Mr. Judson, that in your work as a [198] plumber that you had occasion to work with this type of heater before?

A. I had on different jobs, yes, but—

(Testimony of Thomas B. Judson.)

Q. And would you say you were or were not familiar with the type of inside drum; is that correct? A. That's right.

Q. And I believe you testified in answer to Mr. Bell's question that there was a mesh outer casing and that you had often stood there warming your hands. Is that correct? A. That's correct.

Q. And on those occasions, you had been able to see the inside drum? A. That's correct.

Q. Now, when you answered his Honor's question as to this drum lying off some little distance from the place where the stove had been, did you recognize that drum as a drum similar to the type that was inside the casing?

Mr. Bell: I object to it as leading and suggestive. This is his own witness.

Mr. Butcher: I'll withdraw that question.

The Court: I think it is leading; it suggests the answer, counsel.

Q. Can you identify, in any way, that drum you saw lying to one side, as identical or similar to the drum inside the casing; if you can, do so? [199]

A. Well, that's so long ago, I just don't in my own mind.

Q. Say what's in your own mind.

Mr. Bell: No, I object to that.

Mr. Butcher: Well, he's got a right——

Mr. Bell: Oh, no——

The Court: Well, counsel, that would not be a conclusion to state his—as near as his recollection can permit—to whether it appeared to be similar

(Testimony of Thomas B. Judson.)

or otherwise. I think that would be proper. Not your belief but——

A. I believe it was similar. It's hard to say because it was just laying there—split up—I don't know.

Q. Now, in your best opinion—having seen this instrument, also having seen the trash barrel—in your best judgment—was it a trash barrel or the inner lining of a stove?

A. I would say the inner lining of a stove.

The Court: One thing more, counsel. Where were these trash barrels that Mr. Bell asked you about. Were they inside or outside the barracks?

A. As I recall, I believe there was one right by the door—where we go out.

The Court: Well, how near the stove is that?

A. Oh, I'd say approximately twenty or twenty-five feet.

The Court: Any further questions?

Mr. Bell: One more.

Re-cross Examination

Questions by attorney for Defendant:

Q. How many of those trash barrels did you have in the whole barracks? [200]

A. I couldn't say. I believe there was one by the door, as I recall.

Q. And the others, where were they located?

A. I believe outside the barracks.

Mr. Bell: I think that's all.

The Court: That's all.

(The witness left the stand.)

Mr. Butcher: Now may I——? I call Mr. Mulcahy.

The Court: Yes.

Mr. Michael Mulcahy, called as a witness in his own behalf, was duly sworn——.

Mr. Butcher: Oh, if Your Honor please, may I make a request. I have been expecting a witness to come all morning; that's why I stepped out a little while ago, and he has arrived, according to Mr. Herrick. He is a man employed at the Post of the military and informed me over the telephone this morning that he would have to return immediately, and I would like to confer with him for just a moment and then put him briefly on the stand.

The Court: Well, would you need a recess for that Counsel, or shall we just wait? We can give you five minutes, if you wish.

Mr. Butcher: I would appreciate five minutes.

The Court: Very well. We will take a recess for five [201] minutes while you confer with the witness.

(Thereupon the court recessed from 10:45 a.m., to 10:55 a.m.)

Mr. Butcher: Now, Your Honor, I had just called Mr. Mulcahy, and he had not yet taken the stand. Now I would like to call Mr. Krupa in his place, and call Mr. Mulcahy later.

The Court: Very well.

Mr. Butcher: Mr. Krupa is employed at the Base and has a rather important assignment, and he would like to return to it promptly.

LEO EDWARD KRUPA

was called as a witness on behalf of the plaintiffs, was duly sworn, took the stand and testified as follows:

Direct Examination

By Attorney for Plaintiffs:

Q. Will you state your full name to the court?

A. Leo Edward Krupa.

The Court: Will you spell that for us?

A. Leo, L-e-o; Edward, E-d-w-a-r-d; Krupa, K-r-u-p-a.

The Court: Thank you.

Q. Mr. Krupa, were you subpoenaed to testify on behalf of the plaintiffs in this case?

A. Yes, sir. [202]

Q. Mr. Krupa, where are you employed?

A. I'm employed by the Alaska General Depot, Quartermaster Section. I am the civilian in charge of their petroleum laboratory out at Fort Richardson.

Q. And how long have you been so employed?

A. Since February 1949.

Q. And independent of being in control of the petroleum laboratory, are you qualified as a chemist in connection with petroleum matters?

A. Well, I worked a year for the Gulf Research and Development Company near Pittsburgh, Pennsylvania, and I've got a bachelor of arts degree in chemistry.

Q. In chemistry. And you've worked for five

(Testimony of Leo Edward Krupa.)

years—your work out here has been in connection with petroleum products? A. Yes, sir.

The Court: Your questions are quite leading, Counsel, particularly the last one.

Mr. Butcher: I'm just qualifying him as an expert, Your Honor, and not pertaining to—this part of it to any issue in the case.

The Court: Well, if he is called as an expert, his qualification is very important.

Q. And will you tell us what types of petroleum products you do work on at the Base?

A. Well, we test all petroleum products purchased by the [203] Army, Navy, and Air Force for all of Alaska. In other words all petroleum products purchased by any of the Services are supposed to meet specification limits. And we test these products to see that they do conform to these various limits.

Q. And that covers all petroleum products?

A. Yes, sir; all petroleum products purchased by these three Services.

Q. Are you familiar with the various fuel oils—Diesel oils—and gasoline?

A. Well, I'll put it this way. I'm qualified to speak of fuel oils purchased by the Army, Navy, and Air Force—also Diesel oils; but I can't say I'm qualified to speak of commercial products, such as like oils and Diesel fuels sold by Standard Oil of California or by Evenalt.

Q. Well, could you say what you do know, as a chemist that the oils used by the Army—by the

(Testimony of Leo Edward Krupa.)

military—for the various purposes such as heating and the operation of motor vehicles are similar, generally, to the commercial products?

A. Yes, sir.

Q. All right. Now, I'm going to put a hypothetical question to you, and ask for your opinion in the matter: Assumed for the purpose of this question that a large barracks located at King Salmon, Alaska, that in this barracks are what are called space heater stoves; one located at [204] each end of the barracks. Occupying the barracks are some twelve to fourteen men with beds situated in proper conformance to each other. The stoves are fed through copper fuel lines from outside barrels, and stoves normally using the regular standard fuel oil. Now assuming that the month is October, and that it is anywhere from the first to the 11th of October, and the person responsible for filling the barrels with fuel is mixing diesel oil and gasoline in these quantities: Approximately 50 gallons of diesel oil to 5 gallons of gasoline, and pouring it into the barrels in that mixture, to be used as a fuel for operation of these heating stoves inside the barracks. Now, with those facts in your mind, would that be, in your opinion, a safe operation, or would it——

Mr. Bell: Now—excuse me. I thought you were going——

Mr. Butcher: (cont'g) ——or would it contain hazards which might be dangerous to life or limb or property?

(Testimony of Leo Edward Krupa.)

Mr. Bell: Now, Your Honor, I object to the hypothetical question as not being proper in form. It contains items that are not in evidence and overlooks, or has not mentioned, items of vital importance. Therefore the hypothetical question is an improper question and is not subject to being answered.

The Court: I followed that question very closely, counsel, and cannot agree with your contention. I believe [205] it is properly put. The objection is overruled.

A. In my opinion, it is definitely an unsafe practice.

Q. Would you tell us why?

A. Well, I'll have to speak in somewhat technical terms. Now fuel oils have a definite minimum flash point, and it is set up by your ASTM Society, which is a society that sets up the standard, and it is normally followed by all your oil companies. Now, the flash point is a good indication of the fire hazards properties of the fuel oil. The lower the flash point, the more dangerous the fuel is. Now for instance stove oils have a minimum flash point of 100 degrees. Diesel fuels have a minimum flash point somewhat higher. Now, gasolines have flash points of anywhere from minus 30 degrees to minus 50 degrees. Now, by adding gasoline to Diesel fuels or stove oils, you lower the flash point of the stove oil to, depending on the concentration of the gasoline in the stove oil, you increase—the greater the concentration of the gasoline in the stove oil, the

(Testimony of Leo Edward Krupa.)

greater your fire hazard. Now, when the flash point of your Diesel fuel gets down below 100 degrees, for classification purposes, it becomes dangerous. Like, for instance, fire fighting departments will prohibit such fuels wherever they can, whenever the flash point becomes lower than 100 degrees.

Q. Would you say then, Mr. Krupa, that by adding roughly five gallons of gasoline to 50 gallons of Diesel [206] oil it would put the flash point below 100?

A. Yes, sir, definitely. Any time your concentration is above 5% gasoline, your flash point gets much lower than 100 degrees.

Cross-Examination

Questions by Attorney for Defendant:

Q. Which—Mr. Krupa, which has the higher or lower flash point, Diesel oil or fuel oil?

A. Well—both of them normally are used as fuel oils. We'll classify them this way: Stove oil and Diesel fuel. Stove oil is normally used as a heating fuel. Diesel fuel is mostly used in Diesel equipment; however it can be used as a heating fuel. Normally the stove oils have the lower flash point; but very seldom do they go below 100 degrees; if so they aren't following the ASTM standards.

Q. As I understand, Diesel oil has a flash point quite a lot above 100, doesn't it, normally?

A. It can vary—normally, now, it will vary anywhere from about 140 degrees to 200 degrees.

(Testimony of Leo Edward Krupa.)

Q. Now and this that is manufactured in the big oil fields of Texas and Oklahoma and California—that's the oil you use up here; isn't it?

A. No, sir, I can't say that, sir.

Q. Where do you get it? Where did it come from? [207]

A. Which oils are you speaking of?

Q. I am speaking of Diesel oil, the same that you are talking about.

A. I know, but are you speaking of Diesel fuels purchased by the Army or by Standard Oil——?

Q. If you know, generally used up here. I am not confining you to anyone.

A. Well, sir, there is good evidence that a good bit of your petroleum products can be traced from practically all over the world: from Saudi Arabia and anywhere in the United States.

Q. Well, they used practically the same flash point in Diesel oil wherever it comes from; don't they?

A. No, sir; not necessarily. They do adhere to a minimum flash point. In other words your Diesel fuel will not go below a certain temperature. The flash point of that particular fuel will not go below a certain temperature. However, above that temperature it can go to approximately 200 degrees.

Q. Well in using it you spoke of in equipment—for Diesel equipment; it has to be around or above 100 to be useable in that equipment, doesn't it?

A. Diesel fuel?

Q. Yes.

(Testimony of Leo Edward Krupa.)

A. I said before, sir, that Diesel fuel is normally higher than 100 degrees—[208]

Q. I know.

A. —It will probably be higher than 120.

Q. Now, then the fuel oil—

A. Correction, sir, stove oil?

Q. Stove oil. That generally is around 100, is it?

A. A minimum of 100, sir. There again it can go anywhere from 100 up to 150.

Q. Well, in your use, how high does it have to go before you refuse it—or refuse to accept it?

A. There is no maximum limit, sir.

Q. No maximum? A. No, sir.

Q. Well, naturally if it lights and will burn, that is all you want in it; isn't it? Stove oil?

A. No, sir. There are other properties that are desirable. This is only one of the properties.

Q. Well, the part that lights or ignites in fuel oil is really gasoline, isn't it?

A. Well, to be technical, sir, it's a gas. In other words the liquid is vaporized; it become gaseous. Whenever you get a certain gas-air mixture, then it can ignite. For instance in petroleum products, if your mixture—your gas-air mixture above your liquid is anywhere from one to six per cent, it will ignite. If it goes above six per cent, [209] the gas mixture in there is too rich; it will not ignite. If it goes below one per cent; it is too lean, in other words there is too much air; it also will not ignite.

Q. Now, the only portion of fuel oil that will ignite from lighting—like you have to light it in

(Testimony of Leo Edward Krupa.)

stoves—is the part that is used in making gasoline; isn't it? That portion——

A. No, sir. No, sir.

Q. Well, what else in it will make——?

A. You burn it all. A Diesel fuel is——

Q. ——will light with a match or paper or anything?

A. Would you restate that question, again?

Q. I say the part that will light from a match or paper—a burning paper—to just come in contact with it. That part that will ignite is based upon the gasoline, isn't it?

A. No, sir.

Q. Well, what else is in there? With the gasoline that will ignite?

A. Well, sir, you'll just have to classify it as that certain fraction of Diesel fuel. That's all. You can't classify it as gasoline or kerosene or a naphtha or anything like that.

Q. Well, you can throw a match into kerosene, and it will put the match out, won't it?

A. Yes, sir. [210]

Q. And it will do the same thing with oil?

A. Yes, sir.

Q. Now, then, if it's got gasoline enough mixed with it, the match will light it, won't it?

A. Yes, sir.

Q. Now, that's what I'm trying to get you to tell us. How much content of gasoline does this oil have to have to light it with a match?

A. Well, I can best answer that, sir, with an example: We've had Diesel fuel with a flash point

(Testimony of Leo Edward Krupa.)

of 140 degrees. Now, let me explain the "flash point." The flash point is the temperature of your liquid at which the vapors above it will ignite——

Q. Of course. Now, how high, to say a flash point, how much gasoline is there in the total mixture to where it will ignite with a match?

A. Well, there again it depends on the Diesel fuel, and it depends on the gasoline. Different gasolines need different concentrations, and also different Diesel fuels will need different concentrations; there again depending on the flash point of both. I can best answer your question by an example: We had a Diesel fuel with a flash point of 140 degrees. Now, we added two per cent by volume of aviation gasoline, and the flash point was lowered from 140 down to approximately 90. [211]

Q. And how much did you add to it, 2%?

A. 2% by volume, yes, sir.

Q. 2% by volume. Well, now if five drums were connected together, and they contained 50 gallons each, and would hold 250 gallons, or approximately; and 5 gallons of gasoline was added to that, what proportion——

Mr. Butcher: Your Honor, I object to that question on the grounds that that is not the fact in evidence. The fact in evidence is that he added 5 gallons.

Mr. Bell: No, there is no——

The Court: Every 55 gallons. I recall no testimony about 5 barrels being connected together, Counsel. The testimony to that was—Mr. Franz—

(Testimony of Leo Edward Krupa.)

was that the bull cook told him he added—there was a 55 gallon barrel. That he added 5 gallons of gas to 50 gallons of oil. Therefore the question is not proper. Objection is sustained.

Mr. Bell: Your Honor, I'm sorry. I didn't so understand it.

The Court: That's what he quoted.

Mr. Bell: All right.

Q. (Defense Atty, cont'g): Now, were you ever over at King Salmon? A. No, sir.

Q. Then you don't know what kind of a system they have for heating over there? [212]

A. No, sir.

Mr. Bell: That's all, I believe.

Mr. Butcher: That's all Mr. Krupa. Maybe, Your Honor, has something to say?

The Court: No, that is all. Now Mr. Krupa was subpoenaed here. Is it agreeable that he be excused? Do you have any objection, Mr. Bell?

Mr. Bell: No, I have no objection.

The Court: Thank you.

Mr. Krupa: Thank you, Your Honor.

Mr. Butcher: I'll call Mr. Mulcahy.

The Court: Mr. Mulcahy is sworn?

The Clerk: He was sworn.

THOMAS MULCAHY

having been previously sworn as a witness in his own behalf, took the stand and testified as follows:

(Testimony of Thomas Mulcahy.)

Direct Examination

Questions by Attorney for Plaintiffs:

Q. Will you state your full name to the Court?

A. Tom J. Mulcahy.

Q. And are you the same Tom Mulcahy who is a party to the lawsuit against Haskell Plumbing and Heating Company? A. Yes, sir.

Q. And what is your occupation, Mr. Mulcahy?

A. Plumber. [213]

Q. And how long have you been a plumber?

A. Well, I'd say around thirty-five or forty years.

Q. And during those years have you become familiar with all types of plumbing and heating?

A. Most of them, yes.

Q. Piping work? A. Yes, sir.

Q. And you are a journeyman plumber?

A. Yes, sir.

Q. And are you a member of the Plumbers and Steamfitters Local No. 367? A. Yes, sir.

Q. How long have you been a member of that organization? A. Well, since 1915.

Q. And how long have you been a member of this Local? A. Since '48. 1948.

Q. Now, do you know, of your own knowledge, whether in 1951 there was a contract between Local 367 and a contractor known as Haskell Plumbing and Heating? A. Yes, sir.

Q. You are aware of that contract?

A. Yes, sir.

(Testimony of Thomas Mulcahy.)

Q. Now, were you subsequently employed by Haskell Plumbing and Heating? A. Yes, sir.

Q. In what manner were you employed?

A. As plumbing foreman.

Q. And how did you happen to get employed?

A. Through the Local 367.

Q. Were you issued a dispatch slip?

A. Yes, sir.

Q. What became of that dispatch slip?

A. I gave it to the steward.

Q. To the steward on the job? A. Yes.

Q. Who was that steward?

A. At the time I went out there, I believe it was "Ole" Franz. They was five of us went out there the first time, and I was out there two seasons, and I——

Q. You were employed in '51 as foreman, there?

A. That's right.

Q. For Haskell Plumbing and Heating?

A. That's right.

Q. And you say you were out in 1950: were you employed as foreman that year?

A. That's right.

Q. For Haskell Plumbing and Heating? Is that correct? A. That's right.

Q. All right, now, when did you go there then, Mr. Mulcahy? A. In '51, or—— [215]

Q. '51. 1951.

A. In '51. I went out there, I believe it was the first week or so in May, 1951.

Q. And did you remain there throughout the

(Testimony of Thomas Mulcahy.)

summer months and autumn months up to October 11th? A. That's right.

Q. And all that time you were in the capacity of plumbing foreman? A. That's right.

Q. And as foreman, what particular phase of work did you perform?

A. Well, I had charge of the plumbers on the radar stations out there. Radar work out there. The camp, as they called it.

Q. Who was your immediate superior?

A. Jules Ferer.

Q. And what was his capacity?

A. Superintendent.

Q. For whom?

A. Haskell Plumbing and Heating Company.

Q. Were you paid during that period of time? In 1951, by Haskell Plumbing and Heating Company? A. That's right.

Q. Who signed your check?

A. Jules Ferer. [216]

Q. Were you acquainted with a man named Ben Holbrook? A. Yes, sir.

Q. Was he a plumbing employee of Haskell Plumbing and Heating? A. That's right.

Q. Working under your supervision?

A. That's right.

Q. And doing plumbing work? A. Yes.

Q. Was Mr. Ben Holbrook there on October 11, 1951? A. Yes, sir.

Q. Now, where were you quartered during the summer and autumn months of 1951?

(Testimony of Thomas Muleahy.)

A. In a big Quonset hut, they called it. About 80 or 100 yards from the messhall, and Haskell's quarters that he had there for Jules Ferer. It was about 100 yards.

Q. And in whose control, if you know, was the quarters you occupied. Who furnished them to you?

A. Haskell Plumbing and Heating Company.

Q. And was that furnished to you, if you know, by virtue of the contract under which you were working?

A. That's what it was furnished under; by the contract.

Q. And you also had your meals furnished, did you not?

Mr. Bell: I object to leading the witness. I tried to avoid that all the time. [217]

The Court: That question is leading, but it has been asked and answered so many times that it seems quite harmless at this time.

Mr. Butcher: Well the meals had nothing to do with it.

The Court: No, they had not. It is immaterial, anyhow.

Q. (By Atty for Plaintiffs): Let me ask the question: Who furnished you meals?

A. Haskell Plumbing and Heating Company.

Q. Under the terms of this same contract?

A. That's right.

Q. All right. Now, were you also acquainted with Jesse Hobbs? A. That's right.

(Testimony of Thomas Mulcahy.)

Q. Was Jesse Hobbs there during the summer and fall months of 1951? A. Yes.

Q. In what capacity?

A. Jess was in there as a steamfitter; but slept in the same barracks we did. The plumbers and the fitters were together.

Q. Who was he employed by?

A. Haskell Plumbing and Heating Company.

Q. Was he under your supervision?

A. No, sir. [218]

Q. He was not. But he lived in the same barracks with you? A. That's right.

Q. Now, will you describe the inside of the barracks?

A. Well, it was a barracks about as wide as this room, and I'd say, maybe, twice as long as from here back to that wall. It was a big Quonset hut that was put there by the fishermen, Libby, McNeal, and Libby owned the camp before the construction started out there. The height, I would say, was about like this ceiling; it was an oval shaped Quonset hut.

Q. What was inside of this building?

A. Well, in one corner there we put the deal in—the bathroom—toilets—bath—and showers. And there was two heaters; one about ten feet back from this door, and about ten feet back from this door there was a heater. And there was one ten feet back from this door.

Q. And will you describe those heaters, if you can?

(Testimony of Thomas Mulcahy.)

A. Well, I don't know the name of them but they was a regular space heater. Now, they had a drum inside the heater—inside the encasement—and as one of the members said here, it was for heat and we often put our gloves on there to dry them, or warm our hands, and the two heaters furnished heat for the Quonset huts.

Q. And they were connected up through tubes to outside barrels? [219]

A. That's right; half-inch galvanized pipe.

Q. Now, do you know what kind of a base they set on?

A. Well, the one on that end; call it that end of the building was on a concrete block; and the one——

Q. Off the floor?

A. Off the floor. And the one way up at this end, had a two by four railing around there and was filled with dirt.

Q. And the stove was sitting on the dirt?

A. The stove was sitting on the dirt. Yes.

Q. If you know, were they being used as heaters in the first part of October? A. That's right.

Q. They were being used as heaters on October 11th? A. That's right.

Q. Will you tell us, if you know, what happened on October 11?

A. Well, that was the day we had the fire out there.

Q. And how did you learn about the fire?

A. Well, there was a cement finisher come up;

(Testimony of Thomas Mulcahy.)

we had just hauled the men to work, and he came up there in a jeep that was furnished by his contractor, whoever they were; I don't remember who he was working for—and came up there and hollered at me and said, "Tom, you'd better get your boys and get out there. Your house is on fire." So I went [220] around and I picked "Ole" and I believe it was Callaway, and went by and picked them up and told them, and the news got around and some of the rest of the boys came out there, after we had got out there. By the time we got out there, the Quonset hut on the floor of it just looked like a bed of coals in a locomotive or something.

Q. From one end to the other?

A. From one end to the other.

Q. Could you approach near it?

A. No, we couldn't get near it.

Q. You were unable to get your property out?

A. No way of getting it out.

Q. Now, Mr. Mulcahy, after the fire went out, were you still there? A. Yes, sir.

Q. How long did you stay there?

A. Well, we stayed there; we tried to get Jules Ferer to let us go to town and we had to have some clothes. We didn't have anything left only what we had on—work clothes, is what we had. So, Jules told us that we could go to town, but we had nothing to go to town with, only what check we had; I don't know about the rest of the boys, I know that's all I had. It was just a check that I had coming. I didn't have but probably maybe \$5.

(Testimony of Thomas Mulcahy.)

Q. Did you remain there after the fire had gone out? [221] A. Yes. Yes.

Q. You were. After it had gone completely out?

A. That's right.

Q. Did you make any investigation or inspection of that barracks? A. Yes.

Q. Will you please tell us what you found?

A. Well, I went in there, after the coals and everything had cooled off, so you could get in. I went in and I took some pictures in there. I went in and we looked for stuff and I found gold out of a watch that I had there. It was hanging on a little shelf there and it had burned and went down. I knew about where my stuff was, and I went there and commenced looking. All I ever found was the gold out of that. And my gun, it was burned.

Q. Don't testify as to any property.

A. All right.

Q. I want to know if you made any investigations as to the cause of this fire?

A. Well, I wouldn't say I made an investigation as to the cause of it, but I went in there and the stove at this end of the barracks was laying off of the base where it was setting—about four or five feet I'd say. And there was a split; I'd say it was half inch, and it was laying over on its side—.

Q. Was this split up and down or—?

A. It was a half-inch wide and I would say it was about 14 inches.

Q. 14 inches—

(Testimony of Thomas Muleahy.)

A. A bulge in the inner lining of that tank.

Q. In the fire box?

A. In the fire box or whatever they call it.

Q. All right, now. Did you examine the other stove?

A. Well, it was still setting up on the base.

Q. Will you describe its condition as to its condition before the fire? This other stove.

A. Well, they was both burned when we left there, and this one was knocked off of the base, and the other one was still setting on the base; and in the bathroom there, the heater—the hot water heater in there was still setting, as it had been all the time.

Q. Then, you are saying with reference to the other stove, it hadn't changed its position at all, is that right? A. That's right.

Q. Except for the fact that there had been a fire around it, it was the same as it was before?

A. That's right.

Q. You say you took some pictures?

A. Yes, sir.

Q. (Counsel hands a picture to the witness.)

Q. I hand you what purports to be a picture, and ask you if you recognize that? A. I do.

Q. Is that a picture taken by you?

A. It is a picture taken by me, yes.

Q. How many days after the fire, if you recall?

A.. The second day.

Q. The second day. And where did you have the film developed?

(Testimony of Thomas Mulcahy.)

A. Up there on Fourth Avenue. Its between "C" and the first street this way. It's on that side of Fourth Avenue.

Q. Near Macks?

A. Yes, Macks, I believe.

Q. Macks Photo? A. Macks Photo.

Q. Here in Anchorage? A. Yes.

Q. And that is one of the pictures you got back from the films? A. That's right.

Q. Now, I would like to have this marked for identification, Your Honor, as Defendant's Exhibit No. 3, following which I will offer in evidence.

Clerk: Whose? (Referring to exhibit.)

Mr. Butcher: The Plaintiffs. [224]

(The exhibit was then returned to counsel by the Clerk who then handed it to Mr. Bell.)

Mr. Bell: I object as not being properly identified.

The Court: Your objection is overruled. It may be admitted as Plaintiffs' Exhibit 3.

Q. (By attorney for Plaintiffs): I hand you Plaintiffs' Exhibit No. 3 and ask you if that is—if the picture shows the remnants of the Quon-set hut or barracks building after the fire?

A. That's right. It does.

Q. And what is that little building in front?

A. Well, that was the tool shed. It apparently looks like it's right close to there, but it was about, I'd say 75 feet from the barracks, and we used it as a tool shop—as they called it—a tool shop. As

(Testimony of Thomas Muleahy.)

far as the construction, it was no part of our work.

The Court: May I see that, Counsel?

(Exhibit handed to the court. Exhibit then returned to Clerk.)

Mr. Butcher: That's all.

Cross Examination

Questions by Attorney for Defense:

Q. Mr. Muleahy, I believe you stated you worked there in 1950 and 1951, both?

A. That's right. [225]

Q. When you first went out there, where did you stay?

A. The first three weeks, we stayed at the Skytel Motel.

Q. And was your board paid there by the Haskell Plumbing and Heating Company?

A. That's right.

Q. And you had rooms there at the Skytel, too?

A. That's right.

Q. Didn't you? A. That's right.

Q. Then, later, you moved to new quarters?

A. That's right.

Q. Now, was the Motel crowded?

A. That's right. They asked Haskell to get what men they had out of there because the fishing season was coming on and they needed the space.

Q. Now, you spoke of this Quon-set hut belonging to Libby McNeal and Libby. Is that the canneries: Libby McNeal and Libby?

A. That's the cannery. I said that they'd built

(Testimony of Thomas Mulcahy.)

it. It had to be—been using it.

Q. Then after that, you don't know who it belonged to? A. No.

Q. When you first went over there, it was not in use, was it by any of the contractors?

A. No. [226]

Q. Do you know what connection Gaasland Construction Company had over there? A. No.

Q. Well, you knew there was a Gaasland Construction Company? A. Yes.

Q. I believe you stated they were the general contractors, is that right?

A. Well, I don't know.

Mr. Butcher: (interposing) Well, I don't—

Mr. Bell: Well, I withdraw it; maybe he didn't. Someone did.

Q. (By attorney for defense): Were they the general contractors on the job?

A. Yes, as far as I knew. Yes.

Q. So far as you know then—(coughs). Excuse me. Gaasland Construction Company was the general contractor and Haskell Plumbing and Heating Company was the sub-contractor?

A. That's right.

Q. And you were foreman for Haskell Plumbing and Heating Company? A. That's right.

Q. Now, were your beds made that day at noon; the day of the fire, at noon, when you were there in the Quon-set hut. [227] Were your beds made?

A. Sometimes they were made in the morning and sometimes they were made in the afternoon. I

(Testimony of Thomas Mulcahy.)

can't remember whether they was made that day of the fire or not.

Q. Can you remember anything; whether it had been swept out or cleaned up since you left that morning?

A. I couldn't remember that.

Q. Now, did you know about them mixing this gasoline and oil together? A. No.

Q. You never heard of that?

A. I had nothing to do with it.

Q. Now, this Quon-set hut was a steel frame, was it not, a steel frame?

A. Galvanized iron. Corrugated galvanized iron.

Q. And what was the floors made of?

A. Wood.

Q. Wood. Were they ply wood?

A. No, they was some kind of grooved lumber, I think. I wouldn't say for sure what they was, but they was wood. I know that.

Q. Did you ever see these five drums outside of the place?

A. They wasn't five drums outside the place.

Q. Well, how many were there? [228]

A. There was three.

Q. Three. And, you are quite sure there was not five there, aren't you?

A. I know there wasn't.

Q. Now, did you ever see this bull cook that came there and cleaned up the place for you?

A. No, I don't know who he was.

(Testimony of Thomas Mulcahy.)

Q. You also don't know whether he was employed in the general cooks out there or not?

A. Well, there was somebody that made up the beds and swept the place out; but who he was, I don't know.

Q. Did he come from up at the general cook shack that is there, did he?

A. Well, they had a place up there for him to sleep, I suppose, and Gaasland furnished it; I don't know.

Q. I see. Now, then you never did talk to that man at any time? A. No, sir.

Q. You ate your meals in the general cook shack? A. In the messhall, yes.

Q. And so far as you know, the Haskell Plumbing and Heating Company paid for the meals eaten by the plumbers? A. That's right.

Q. And also paid for their keep, of course?

A. Yes. [229] * * * * *

Redirect Examination

Questions by Attorney for Plaintiffs:

Q. I believe your answer to Mr. Bell's question: "As far as you know, Haskell Plumbing and Heating Company paid for your meals"?

A. That's right.

Q. Your answer to that is that as far as you knew, they did. Well, you don't know whether they did or not, do you?

A. I don't know whether they paid for them. I know that our keep was furnished, according to

(Testimony of Thomas Mulcahy.)

our contract. Our keep, as they called it, board and room, is paid for by the contractor that hires us through our Local.

Q. During all the time that you were down there, did you ever look beyond your own employer for your board and keep? A. No, sir.

Mr. Butcher: That's all.

The Court: That will be all then, Mr. Mulcahy.

Pardon me, just a moment. (The Court then called the bailiff and talked quietly to him.)

Mr. Butcher: If Your Honor please, that brings us to a point where we propose to introduce into evidence as [230] evidence, the deposition of one, Jesse Hobbs. Now this deposition now before the Court is rather voluminous, and a great deal of it covers the identical material covered in the interrogatories, and under the ruling of the Court made yesterday, I have limited the testimony of each of these plaintiffs who have been called as direct witnesses to the bare facts leading up to the fire, and have not gone beyond the fire on the grounds that the interrogatories were fully covered. In Mr. Hobbs' deposition, I propose to introduce that part of it also and nothing beyond that although it's all in the volume. Now, would that be in accordance with the Rule?

The Court: In accordance with the Rule, you may introduce part of it, but as I understand it, your adverse party may then—or has then the right to request that it all be introduced.

Mr. Butcher: Well, the ruling that Your Honor

made yesterday that the testimony of these men——

The Court: Well, no. That was not the logic of that, Mr. Butcher. The thought in admitting these interrogatories was precisely the same as the deposition,—in effect, a deposition, and it was not necessary to hear additional evidence on those points.

Mr. Butcher: Well, then wouldn't that be——

The Court: The entire interrogatories were to be [231] considered; not just a portion of them.

Mr. Butcher: Yes. Well, now we have the interrogatories in there for Mr. Hobbs——

The Court: Yes. The purpose of admitting them was to avoid the necessity of calling the witnesses for oral testimony on the same subject; not to exclude a portion of the interrogatories.

Mr. Butcher: In view of the fact, then, that we already have Mr. Hobbs' testimony in the interrogatories, which is the greater part of this deposition already in evidence——

The Court: Yes.

Mr. Butcher: Then, it would seem to me that on the base of Mr. Hobbs' limitation would be the same as these other witnesses, and we would introduce the same type of testimony from the deposition, which we had taken down in Seattle the other day, and leave the greater bulk of it to that covered by the interrogatories.

The Court: Well, I still don't quite get your point. It is up to you whether you wish to offer the deposition in evidence. Excuse me just a second. Rule 26(d) (4) states that “* * * * if only a part of a deposition is offered in evidence by a party,

an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts." [232]

That is a little different than what I had just stated. It is the adverse party that can require that it be all introduced; but may introduce any other parts. So that—pardon me—Can require that all of it be introduced which is relevant to that part, which would be the particular subject as to which you offer it. But even at that the adverse party may introduce all other parts, if he wishes to.

Mr. Butcher: That are relevant to the part that are——

The Court: No. That's not the way I read it. He can require that you introduce all of the rest of this evidence——

Mr. Butcher: Well, I have no objection——

The Court: ——or that he may introduce——

Mr. Butcher: ——but I thought, Your Honor——

The Court: ——all of it.

Mr. Butcher: ——we've called witness after witness, and we have limited them to those questions not involving the loss of their property which is fully covered by interrogatories. Now the same situation exists as to Mr. Hobbs——

The Court: Yes.

Mr. Butcher: ——instead of calling him here and putting him on the stand, we've called him down at [233] Seattle——

The Court: Yes——

Mr. Butcher: ——and covered that same material that is in the interrogatories.

The Court: ——so that you need not call him here. The subject matter being covered by his deposition.

That portion of the deposition relating to the subject of his employment, and the fire, may then be admitted in evidence, subject to any further offer or requirement which the defendant may have.

Mr. Butcher: Then, may I take the stand, Your Honor, and read the deposition in so far as I feel that it is applicable in conformance with the limitations which Your Honor has——?

The Court: Would you consider that necessary? Is it the practice here?

Mr. Butcher: It has been the practice wherever I have introduced a deposition—is to read it. Mr. Bell is that your practice?

Mr. Bell: Well, it is one of the recognized practices for the attorney to take the stand and read it; it is all right. He doesn't have to under the law, I don't think.

The Court: We have not been doing that here because of the——

Mr. Butcher: Well, I don't have any desire to do it, [234] Your Honor, it is just that I thought that was the proper procedure. I remember in the Dushon case which was the case that required 28 days of trial in which Mr. Grigsby and I represented the plaintiffs; we read, I guess, twenty or thirty separate depositions taken from all over the country, and Judge Dimond required that we take the stand and read question and answer, so that the reporter got it read into the records.

The Court: Very well. That may be the better practice, if requested. Therefore the deposition which has not yet been opened or published may be published at this time, and you may read from it as desired.

Mr. Butcher: The point is, Your Honor, that the reporter, if she makes up a transcript of the record——

The Court: Yes, I see.

Mr. Butcher: ——will make it up as testimony from her record.

The Court: Yes.

(The Clerk opened a sealed envelope and handed it to the attorney for the Plaintiff.)

(Mr. Harold J. Butcher, attorney for the plaintiffs, took the stand and testified as follows:)

This is in the District Court for the Territory of Alaska, Division Number Three at Anchorage. Jimmy Weeks, Tommy [235] Judson, Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, Ben Holbrook, Jesse Hobbs and W. Van Smith, Plaintiffs, vs. Haskell Plumbing and Heating Company, Inc., a corporation authorized under the laws of the State of Washington and doing business in the Territory of Alaska, Defendants.

This is the deposition of Jesse Hobbs.

“Be it remembered that the deposition of Jesse Hobbs was taken pursuant to Notice of Taking Deposition and written stipulation of counsel, attached hereto, on Thursday——”

The Court: (interposing) I think you need not read the formal parts.

Mr. Butcher: I'll dispense with reading the certificate, then, and also the appearances of counsel which the deposition will show and also the stipulation between counsel appearing that they were taken at—ahead of the time stated in the notice by stipulation, and proceed directly to the examination.

* * * * * [236]

JESSE HOBBS

one of the plaintiffs, having been first duly sworn by the Notary Public, testified in his own behalf as follows:

Direct Examination

By Mr. Gemmill:

Q. Will you state your full name?

A. Jesse A., for Abner, Hobbs.

Mr. Gemmill: The testimony here will be just like it would be in Court under oath. You swear that what you are testifying is the truth.

The Witness: That's right.

Q. (By Mr. Gemmill): And your present address is what? A. 12030 Renton Avenue.

Q. What is your occupation?

A. Steamfitter.

Q. Were you employed at King Salmon, Alaska, also referred to as Naknek, Alaska, in 1951?

A. Yes, I was.

Q. And by whom were you employed up there?

A. I was dispatched from this Local in Anchor-

(Deposition of Jesse Hobbs.)

age down to work for the Haskell Plumbing and Heating Company who had a mechanical contract at King Salmon at that time.

Q. When you say you were dispatched by the Local at Anchorage, you mean the Local Union?

A. The Local Union, yes.

Q. Plumbers Union?

A. No, Plumbers & Steamfitters Union.

Q. Does that have a number?

A. I think it is 367. I forget. That number slips my mind. I believe it is 367.

Q. When did you go to King Salmon, Alaska?

A. It seems to me that it was around the first of September or the middle of September, or right in there.

Q. What year? A. Of 1951.

Q. Where were you living or residing at the time that you went to King Salmon?

A. Before I went to King Salmon?

Q. Yes.

A. Let's see: in 1951 I was in Anchorage, and that year I believe I was staying—boarding and rooming with a friend of mine up there in Anchorage.

Q. Did you make application with the Haskell Heating and Plumbing Company for employment before you went to King Salmon?

A. No. It doesn't work that way with plumbers and steamfitters. They call into the Local for so many men to be dispatched by the Local there.

Q. By "they" you mean the employer?

(Deposition of Jesse Hobbs.)

A. Yes, the employer. And the Local dispatches the men from the Local Union to the job wherever it may be, under the negotiated contract. There is an agreement that is written up and all plumbing and heating contractors must sign that agreement before any men are dispatched to them to cover their fairness in pay and also the working conditions that would become involved throughout the work.

Q. When did you first receive notification that you were to go to King Salmon?

A. Well, the day,—let's see: it was in 1951—it was in the fall, I think it was. I think about—I would have to look up in my records to see, my work records, where my checks were first dated, but the date that I think that it was was in September. It was late in September or the first of October. I don't remember the exact date now, exactly.

Q. Who notified you?

A. The business agent. He wrote out the dispatch from the Steamfitters Local at Anchorage.

Q. Business agent for this Union?

A. Yes, for the Union.

Q. Notified you?

A. Yes. And the day that our dispatch was written was the day set that we were on the payroll. And then we caught the next available transportation out of Anchorage to Naknek, to the King Salmon area.

Q. Were you transported up there by plane?

(Deposition of Jesse Hobbs.)

A. We were transported by plane at the company's expense.

Q. Where did you first live when you landed at King Salmon?

A. Well, we came into the barracks there which were—there was one barracks that all of Haskell's men were assigned to. And I believe we had one logger was staying there also—a pipe logger.

Q. Did you go immediately to the barracks when you arrived there? Did you go immediately to the barracks that you continued to occupy throughout your job?

A. Well, when we landed from the plane down at King Salmon a truck came down and picked us up and took us up to the camp site, which was, oh, probably, approximately a mile from the airport; and then we were billeted, and we picked up our bedding, our sheets and our blankets and pillow, and we were escorted over to the barracks which were occupied by the fitters and the plumbers.

Q. Did anything happen to those barracks later on?

A. Yes. The barracks burned one day right after the mid-afternoon meal. We went out, and we went over to the job site and was working and someone came over and told us that our barracks was afire, and that we should go over there and see if we could salvage anything. And then when we got up to the barracks it was just such a raging fire that you couldn't even get close to it.

(Deposition of Jesse Hobbs.)

Q. These barracks which you have mentioned, was that a Quonset hut?

A. It was a Quonset hut, yes, and it had a toilet and lavatory and shower, toilets, lavatories and shower, and a shower there in it, and it had two—two, I think that it had—two heating stoves, oil heating stoves, and it had one hot-water tank, which was in the men's latrine. And I believe that they were oil-type burners.

Q. For the hot-water tank?

A. The hot-water tank had oil-type burners.

Q. This was the Quonset hut which you occupied when you first went up there?

A. Yes, that is true.

Q. You mentioned being escorted over to this Quonset hut from the airport?

A. From the airport.

Q. By truck?

A. It was. It was the truck that the men was—they used, that they used to transport men from the camp to the job.

Q. Whose truck was it?

A. Now, the truck,—now, that is the question I have asked. That was a—Haskell had it, but I think they had it as a rented truck from, from the Army at that time, and it was a kind of a power rig, you know. It had a winch on it, and it had the back end enclosed so that, you know, in taking the men back and forth to the job, to the job and back to the camp, that they *would in* out of the weather,

(Deposition of Jesse Hobbs.)

in rain or bad weather. And that is the truck that they met us with.

Q. Do you know who drove the truck? I mean whose employee drove the truck?

A. Haskell's employee drove the truck and he just happened to be the plumber foreman.

Q. Do you remember his name?

A. Oh, I know it as well as mine, but I can't think of it. I just can't (witness pauses)—oh I just can't think of it—Mulcahy was his name—Tom Mulcahy.

Q. Are you acquainted with Jimmy Weeks?

A. Jimmy Weeks? Yes. I know Jimmy Weeks.

Q. And Tommy Judson?

A. Tommy Judson, yes, I know him.

Q. Mike Cullinane? A. Cullinane?

Q. Cullinane, yes. A. Yes, I know him.

Q. Ole Franz? A. Ole Franz, yes.

Q. Roy Callaway? A. Roy Callaway, yes.

Q. Tom Mulcahy? A. Yes, I know him.

Q. Ben Holbrook? A. Ben Holbrook, yes.

Q. W. Van Smith? A. Van Smith, yes.

Q. You are acquainted with all of those?

A. Yes. Well, maybe I had better say that Van Smith—Van is dead at the present time. He was killed up in Anchorage.

Q. Did these men occupy the same hut or barracks as you occupied? A. Yes, they did.

Q. That is, from the time that they arrived there until the thing burned down? A. Right.

(Deposition of Jesse Hobbs.)

Q. Where were you when you were first told where you would live at King Salmon?

A. Well, we knew that as soon as we were passed out any jobs. We were told that the contract was negotiated that the men will have first class room and board—would you ask that question again? I seem to——

Mr. Gemmill: Maybe you had better read that again.

(Question read by the reporter.)

A. Oh, that's right. I was at the camp site.

Q. Who told you where you were to go?

A. This plumber foreman and the shop steward, who went along with us, and said this is the barracks that we stay in, and said that Haskell had arranged for Haskell's men to all stay together.

Q. Did any one tell you where you would eat your meals?

A. No, that wouldn't be hardly necessary due to the fact that there was only mess hall there. That was understood that we would eat at the mess hall.

Q. Did you take some personal belongings with you when you went to King Salmon?

A. The way we fellows work,—at the present time my wife was down at the States here, down at Seattle, and we go up there to go up and stay, and we go up in the spring and we take all our personal belongings, and every place we go we take them along with us.

(Deposition of Jesse Hobbs.)

Q. And did you take your personal belongings with you to King Salmon?

A. Right. I took all my personal belongings with me to King Salmon.

Q. Without going into details, naming each article which you had, will you describe generally what belongings you took with you up there to King Salmon?

A. Well, you take a suit of clothes, your suit and your top coat and all your dress clothes, besides——

Q. The reason isn't necessary, just what you had with you.

A. And you take all your working clothes, and you take—then you take all your fishing gear if you, you know, if you like to fish, and I happen to be one that cares for fishing. And there was good fishing there, and every place I go in Alaska I always take my fishing gear and things; and you take all your work clothes, heavy work clothes because it was the fall of the year, and we had all our—we always come prepared for any kind of weather, according to what kind of weather we have. You have to have all the different types of clothes due to the fact that you go up there in the spring of the year and then you go through the summer months and then you go into the winter before you get home, and you have all your clothing with you and all your personal belongings that you would have and use in the matter of—throughout the year.

(Deposition of Jesse Hobbs.)

Q. Where did you keep these articles of personal property when you were at King Salmon?

A. Well, we had above, or rather by the bed we had a rack there, a metal rack there, and it had a rod in it, and we had—I hung my—on all the beds they had that, and we hung our clothing up, our best clothes, of course, and——

Q. You say you “hung them up there.” What——

A. I hung them up on this rack there in the barracks right by my bed.

Q. In the barracks that you folks occupied?

A. Yes. And what stuff that was personal that we didn’t want anybody to mess around in we kept in our traveling bags. Then our clean clothes——

Q. Where did you keep your traveling bags?

A. I kept mine under the bed, my cot.

Q. In the barracks?

A. Yes. And then we had fashioned out of boxes our table by our beds. And then we had incidentals in that, in those boxes we had our stationery, pens and pencils and all kinds of writing materials and candy and so forth. And then there was, you know, castor oil, if you wanted it——

Q. Your bed and bedding was furnished up there?

A. The bed and the bedding was furnished there, yes.

Q. Do you know who furnished that?

A. Well, as far as I know, Haskell was supposed to furnish it. He was supposed to furnish free room and board.

(Deposition of Jesse Hobbs.)

Mr. Ehrlichman: I object to that as not responsive.

Q. (By Mr. Gemmill): Were you able to salvage any of your personal property after this fire or during the fire?

A. Everything was a complete loss.

Q. Did everything in the barracks burn up?

A. Everything in the barracks burned up completely. There was just ashes left. Anything that was metal was all molded together. All of our records, birth certificates, all of our important papers,—and even anything that was metal whatsoever was just a skeleton left. That was all. It was a tremendous hot fire.

Q. Generally speaking, what stage was the fire in when you first saw it?

A. The stage, the fire—well, the smoke and flame was shooting out of both ends of the Quonset hut and it was so hot that you couldn't even get near it.

Q. What kind of material was the Quonset hut made of?

A. The outside was metal and the face, the front and the back, well, it seemed to me that it was hard board, and with, you know, it had, we'll say, it was hard board was the face of it, and it had windows in it. It was just the regular standard Quonset hut. It was quite long.

Q. Did you or any of the other plaintiffs whose names I have mentioned have anything to do with

(Deposition of Jesse Hobbs.)

taking care of the stoves in the Quonset hut where you lived?

A. On all those jobs like that on maintenance work in the barracks and throughout the camp site the plumbers and the fitters had the jurisdiction over the maintenance and the—the maintenance of pipe lines or anything, like in the mess hall, we have to take care of all the running in lines, hot water lines, and they set up the camp, and the main things of that sort, such as oil and water and like that.

Q. Did you or any of the other plaintiffs put oil in those stoves?

A. No, we didn't put oil in the stoves. They had what they call the bull cook. The bull cook took care of—what I think—what actually—they would, the driver would, they would pick up the oil down at the King Salmon in barrels. They'd have it pumped in barrels and then the truck driver would haul them up to the respective camp sites and from that there they would deposit them up—so many at each building, and these bull cooks in that certain area would go out and pump with a fuel pump from the barrel into the barrels that was set up on the stand and that would feed the stoves and the hot-water tank.

Q. Who employed the bull cooks?

A. The main contractor, which was—Gaasland.

Q. Gaasland? A. Yes.

Q. Who hauled the oil?

A. Gaasland hauled the oil.

(Deposition of Jesse Hobbs.)

Q. Was there any gasoline around the camp?

A. Well, yes, there was gasoline in the camp. The barrels were all piled together, and it has been rumored that——

Q. You can't testify to rumors; just to what you know.

A. Well, they were—the way they were piled up there, there is a possibility that——

Mr. Ehrlichman: I will object to what was a possibility.

Q. (By Mr. Gemmill): You can only testify to what you know.

A. Oh, I see. I know that all the barrels were all together.

Q. Were there any barrels—do you know, were there any barrels delivered to the Quonset hunt that you occupied that had contained gasoline?

A. I can't say. No, I don't know. I couldn't answer that. But certainly something caused that thing to take off like that with an explosion, with such an explosion. They said, the bull cook——

Mr. Ehrlichman: I will object to this as hearsay.

Q. (By Mr. Gemmill): You can't testify to what the bull cook said.

A. Not to what the bull cook said?

Q. No.

A. Well, I heard him say that. I heard him say——

Q. Well, that is still hearsay.

A. Yes, sir.

Q. The rules of evidence exclude that.

(Deposition of Jesse Hobbs.)

A. Yes.

Q. You listed your personal effects that you lost in your Complaint, did you not, in your Complaint in this action? A. Yes.

Q. You have alleged in your Complaint that you lost a suitcase? A. Right.

Q. Do you remember where you purchased that suitcase?

A. I got that at Frederick & Nelson's.

Q. Do you remember what you paid for it?

A. It was a Gladstone bag, and it was a good bag—I know it was \$35.00 or more for the bag.

Q. When did you purchase it?

A. Oh, about 1950, I think it was 1950.

Q. Do you know about what time of the year?

A. I think it was, well, it was in September, I think; around in that area, in there some place; I can't remember exactly—the exact date.

Q. What kind of material was it made of?

A. It was a leather bag. It was a brown leather.

Q. What was the value of that bag at the time it was destroyed by fire?

A. The value—well, it was a new bag. To me it was worth the price that I paid for it because it was a new bag.

Q. You also listed in your Complaint a traveling bag that you had with you at that time. What was the nature of that bag?

A. Well, it was a leather bag also, leather, and it was a brown bag. It was the type that well—you had a top that spread out—for a suit—you

(Deposition of Jesse Hobbs.)

know, a regular bag, you know; a suitcase that would open from the top, and it has clasps on it.

Q. Do you remember where you purchased that?

A. At Frederick & Nelson's.

Q. Do you remember what you paid for that?

A. I think it was around twenty to thirty; twenty dollars or more.

Q. And about how old was the bag at the time of the fire?

A. Well, it was purchased—well, it was just about a year old.

Q. What was the value of that bag at the time of the fire?

A. The bag was in perfect shape and it was just the same to me as a new bag.

Q. You have listed a shaving kit that you had with you at that time. What was the value of that shaving kit at the time of the fire?

A. I would say it would be worth, what I estimate it would be \$15.00 or more, due to the fact that when you go out on these out-of-town jobs you are not always sure of electricity. Sometimes the generators will break down and so forth, and you have to shave by, you know, other than an electric razor; and you would—you always take that along, one with a straight edge; just a straight edge. And then I had one—then I had a safety razor, and then I had brushes and astringent and all that stuff in it. It was quite a nice one. It was made out of leather.

(Deposition of Jesse Hobbs.)

Q. You say that the value of that was \$15.00?

A. Yes, it would be that and more.

Q. You have also listed a Remington razor. Was that destroyed by fire at that time?

A. Yes, sir; that was destroyed by fire.

Q. What kind of a razor was that?

A. It was a regular electric shaving razor. It was a Remington.

Q. What did you pay for that?

A. Oh, I think around—the nearest I can remember, it was about \$22.00 or more.

Q. And about what age was the razor at the time of the fire?

A. It was about, right around, I imagine, a little less than a year; right around a year old anyway.

Q. Was it in good working condition?

A. Very good condition, yes, it was.

Q. What would you say the value of that was at the time of the fire?

A. Around \$22.00. To me it was the same as a new one. And I would have to pay more than that for a new one, for the full price. It was the same as that to me.

Q. You listed slippers. A. Yes.

Q. Were they lost in the fire? A. Yes.

Q. What was the value of the slippers at the time of the fire?

A. They were about \$7.00. They were leather. You would buy them for \$7.00. They were leather slippers.

(Deposition of Jesse Hobbs.)

Q. And how about the slippers, about how old were the slippers at the time of the fire?

A. Well, they were less than a year old. I think my wife got them for me.

Q. Did you lose some shoes in the fire?

A. Yes, I lost Oxfords, you know. I lost three pair of Oxfords. And I lost my working boots and my rubber galoshes and all that stuff that you have along with you.

Q. Three pairs of Oxfords you say you lost?

A. Yes.

Q. What did you pay for the Oxfords?

A. Well they run right around from—right around \$15.00.

Q. For each pair?

A. For each pair, yes. I have a hard time—I have a hard foot to fit. My feet are hard to fit. I have to buy—I have a small foot with a high in-step and it's wide and it's very hard—I can only buy shoes, you know, at a certain place or certain prices, and they're pretty—they run a little higher than the average.

Q. About what age were these shoes—these Oxfords that you lost in the fire?

A. Oh, they were, they were practically new ones. They were, oh, probably six months old at the most.

Q. You mentioned losing some work boots. What kind of material were they made of?

A. They were heavy work boots. As a rule I have two pair of boots that I take on a job. The pair

(Deposition of Jesse Hobbs.)

that I had on at the time, working, and then I always had a spare pair. Some were leather and some were—out in the gravel you might lose a sole or something like that, and then I always have a pair that I can always have on hand that I can have the other ones fixed, send the other ones in and have them fixed.

Q. What did you pay for the boots?

A. \$18.00. I paid for those \$18.00. I got them at the Bon.

Q. What kind of material were the boots?

A. They were heavy; heavy work boots.

Q. What kind of material were they?

A. They were leather.

Q. And you paid \$18.00 for them?

A. Yes. They have a hard toe and a steel instep and——

Q. And how old were those boots at the time of the fire?

A. Well, I got them just before I went up there, and in fact there is one pair that I hadn't worn yet. I was still wearing the pair that I had.

Q. Was there another pair of work boots besides the one pair, the leather ones?

A. Well, yes; well, I had—then I had the rubber boots that I have always carried along, and then overshoes, too, to put on.

Q. What did you pay for the rubber boots?

A. The rubber boots, as far as I can remember I think they run about eight or ten dollars—right around ten dollars.

(Deposition of Jesse Hobbs.)

Q. Had you worn them some?

A. I had worn them a few times.

Q. And then your overshoes—what did you pay for them?

A. The overshoes I got, I believe, up in Anchorage. Let's see—I think they ran right around, the rubber overshoes, they run around \$7.00 or \$8.00.

Q. Had you worn those at all?

A. No, I hadn't worn those because—well, due to the fact that you take those along for the winter, to put over your boots, and I hadn't worn them.

Q. And you got those shortly before you went to King Salmon?

A. Yes, before I went to King Salmon.

Q. Didn't you lose a suit?

A. Yes, I lost a suit.

Q. What kind of a suit?

A. Well, it was a blue suit. It was a blue suit that I got down at Frederick's in 1950.

Q. What did you pay for it?

A. \$80.00.

Q. Was it a dress suit?

A. Yes, this was a dress suit.

Q. Had you worn that some prior to the fire?

A. Yes, I had worn it some, but it was in excellent condition.

Q. What would you say the value of it was at the time of the fire?

A. Well, the value of the suit would be just the same as a new suit because it was in good condition.

(Deposition of Jesse Hobbs.)

That is, there was nothing the matter with it. It was in first class shape.

Q. Did you lose some dress shirts?

A. Yes.

Q. How many?

A. Three white ones; three white ones that I know of besides my ties and---

Q. What did you pay for the dress shirts?

A. They were good dress shirts, and they cost about \$10.00; right around \$10.00.

Q. For the three? A. Apiece.

Q. Ten dollars apiece?

A. Right around that; right around \$10.00 apiece.

Q. Had you worn those?

A. I had worn them. I had, yes. And they had been laundered. Yes, I had worn them.

Q. What would the value of those shirts be at the time of the fire?

A. The shirts were in excellent condition, and they were in the same state as new shirts would be.

Q. Did you lose any other shirts besides these dress shirts?

A. Yes, I lost work shirts, and then I had--- usually a fellow takes along a couple of sports shirts.

Q. How many work shirts did you lose?

A. As far as I can remember, either three or four. There would be all of four, something like that.

(Deposition of Jesse Hobbs.)

Q. What kind of material were the work shirts made of?

A. They were a heavy wool, heavy wool shirts.

Q. What did you pay for each of those wool work shirts?

A. I imagine right around \$10.00; \$10.00—something like that.

Q. For each one? A. For each one.

Q. About how old were they at the time of the fire?

A. They were practically new. They were new at the time, due to the fact that I hadn't worn them. They were for winter, you know, for cold weather. And I got them previous, before going to Alaska.

Q. And you mentioned a sport shirt—one or more sport shirts? A. Yes.

Q. What kind of material were the sport shirts made of?

A. They were regular sport shirts. I don't know very much about material, but they were good.

Q. Wool or cotton or—

A. They were, I would say wool; I don't know the type of material, but they were good shirts.

Q. How many?

A. Either two or three.

Q. Do you remember what you paid for them?

A. I imagine around \$6.00 or \$7.00.

Q. For all of them? A. No; each.

Q. How old were they at the time of the fire?

A. They were practically new.

Q. Had you worn them some?

(Deposition of Jesse Hobbs.)

A. I had worn them some, but they were in excellent shape.

Q. What would you say the value of those sport shirts were at the time of the fire?

A. They were in just such good shape and they were the same as new shirts, so the value to me would be the same as a new shirt.

Q. Did you lose any sox?

A. Yes. Yes, I lost some dress sox. And I lost—I lost all my heavy work sox and my light work sox that I had.

Q. What was the value of all of your sox that you lost in the fire?

A. Well, I would say about, right around between \$30.00—right around \$30.00 or more, the best that I can remember.

Q. Do you remember how many pairs of each kind of sox you had?

A. I had at least six pair of sox. I had six pair of dress sox. I always had that many along; and then either six or eight pair of wool sox—about eight pair of work sox.

Q. What kind of material were the work sox made of?

A. They were a heavy wool—boot sox—and they were very good.

Q. Did you lose a top coat?

A. Yes, I lost a top coat; I lost that.

Q. Where did you buy that?

A. I think it was at Frederick's. It was in very good shape. I had worn it off and on, but it was in

(Deposition of Jesse Hobbs.)

very good shape. It was the same as a new coat to me.

Q. When did you buy that?

A. In 1950, I think.

Q. Do you remember what you paid for it?

A. \$60.00, as I remember. Yes, \$60.00 or more.

Q. What would the value of that be at the time of the fire?

A. The value of that would be the same as a new one because it was in very good shape.

Q. Did you lose any gloves?

A. Yes, a couple of pair of gloves—dress gloves. And I always bought a dozen or a dozen and a half of work gloves.

Q. What did the dress gloves cost?

A. I think,—they ran right from \$7.00 to \$9.00 a pair, about \$7.00 or \$8.00 a pair; something like that.

Q. Had you worn the dress gloves?

A. Yes, I had worn the gloves. They were the same as new gloves, though.

Q. And what did you pay for the work gloves?

A. Well, the work gloves would run right around 50 cents a pair.

Q. Did you lose any underwear in the fire?

A. Yes, I lost my summer underwear, T-shirts and so forth, and they were all in good condition because I got some new ones oh, in just about August, in Anchorage—tops and shorts and then my winter underwear was all brand-new underwear that I had not worn. I hadn't worn them yet.

(Deposition of Jesse Hobbs.)

Q. What did you pay for the woolen underwear?

A. They ran right around \$10.00 to \$12.00 a pair.

Q. And you had how many?

A. I had three pair of heavy wool underwear.

Q. Which would run?

A. Which would run right around \$36.00.

Q. Had you worn those at all?

A. No, I hadn't worn those.

A. And what did you pay for the summer underwear?

A. The summer underwear, I would say right around \$15.00.

Q. For all of it?

A. Yes, for all of the summer underwear.

Q. Did you lose any work clothes?

A. Yes, I lost all my overalls, my shirts——

Q. You mentioned shirts.

A. Well, yes, overalls and work pants that I have underneath. They were all in good shape. And sweatshirts. And a heavy parka. There was a parka. And then I had one of these alpaca-lined jackets.

Q. All right. Now, let us go back over these. What did you pay for the work pants?

A. The work pants ran right around \$6.00 or \$7.00 a pair.

Q. What material were they made of?

A. They were made out of whipcord material.

Q. And about what age were they?

A. The age was—I got them new before I went

(Deposition of Jesse Hobbs.)

to Alaska there, and—that would be less than—right around six months.

Q. You had worn those some?

A. Some, yes.

Q. And your parka. Where did you buy the parka?

A. I bought it in Alaska at the surplus store.

Q. Do you remember what you paid for it?

A. I paid \$25.00 or more for that heavy parka.

Q. And had you worn that before the fire?

A. No, I hadn't worn that before the fire.

Q. And what would you say the value of it was at the time of the fire?

A. I would say that the value of it was the same to me as new.

Q. The alpaca jacket. Where did you buy that?

A. I bought that up there, too, at the surplus store.

Q. What did you pay for the alpaca jacket?

A. I think it runs between, about, right around—it ran \$20.00.

Q. And was it new? A. It was new.

Q. And was your parka new when you purchased it? A. Yes.

Q. Had you worn the alpaca jacket prior to the fire?

A. I think I had worn the jacket a couple of times.

Q. What would you say the value of it was at the time of the fire?

(Deposition of Jesse Hobbs.)

A. The value of it would be the same as a new one to me because it was in good—excellent shape.

Q. Did you lose a hat?

A. Yes, I lost a Stetson hat.

Q. Where did you buy that?

A. I bought that at the Bon.

Q. Here in Seattle?

A. In Seattle, here, yes.

Q. Do you remember what you paid for it?

A. I think I paid either \$18.00, \$15.00 or—\$15.00; right in the neighborhood of \$15.00 for the Stetson.

Q. When did you buy that hat?

A. I bought that in 1950, I think.

Q. Had you worn that some? A. Yes.

Q. What did you value that hat at at the time of the fire?

A. The hat was in very good shape, and it was the same as a new one.

Q. Did you lose a cigarette lighter?

A. Yes, I lost a cigarette lighter. I think my wife got it for Christmas.

Q. Do you know what the value of that was?

A. \$10.00 or more for the lighter.

Q. Did you ever know what the purchase price of it was?

A. My wife told me it was \$10.00.

Q. What kind of a lighter was it?

A. A Ronson.

Q. How old was it?

A. Well, I had it—it was less than a year old.

(Deposition of Jesse Hobbs.)

Q. Did you lose some dentures or——

A. Yes, I did.

Q. ——or false teeth?

A. Yes. I had a partial upper and lower, and I didn't wear them to work that day, which was unfortunate.

Q. Where did you have those made for you?

A. I had those made at Clark's here in Seattle.

Q. Do you remember what you paid for them?

A. \$150.00.

Q. A hundred and fifty what?

A. A hundred and fifty dollars.

Q. And how old were they?

A. Well, now, let's see: they were about three years old, but they were in good shape. There was nothing the matter with them at all; they were in good shape.

Q. And did you lose some fishing equipment?

A. Yes.

Q. What did that consist of?

A. Oh, a couple of fly rods and then a casting rod and, oh, the flies and lines and sinkers and all of my tackle, box, and everything that I would have in it.

Q. Do you know about what you paid for all of that equipment?

A. Well, I would say it would—as a very conservative—it would be right around \$60.00 or more.

Q. How many casting rods did you have?

A. I had one; and two fly rods.

(Deposition of Jesse Hobbs.)

Q. Do you remember what you paid for each of those rods?

A. Right offhand I think around—I think those fly rods cost right around \$15.00 or \$20.00 each.

Q. Each? A. Each, yes.

Q. And were they in good condition?

A. They were in very good condition. And my reels went, too.

Q. Oh, what did you pay for the reels?

A. I had an automatic reel, and then I had a couple of these winding reels. I think that the automatic reel ran right around \$15.00, that one, and the others I think ran around from \$8.00 to \$14.00.

Q. Do I understand you to say that you estimate the value of all of that fishing equipment——

A. And that's way low.

Q. ——at about fifty dollars?

A. Yes, I would, and that's way down low. It don't take long to put sixty dollars in the tackle box, alone.

Q. Did you lose a belt and suspenders?

A. Yes.

Q. What were they worth?

A. The belt and suspenders, they were practically new. They were, I think, right around, for the belt was right around \$5.00, with my initials on it, and——

Q. The suspender a couple of dollars?

A. Yes, right around a couple of bucks for them.

(Deposition of Jesse Hobbs.)

Q. Is there anything else that you lost that you——

A. Well, it's been quite a while ago and I—yes, I lost all my plumbing books; and I had books on heating, and a birth certificate, and all of that—the important papers that I had along with me; all that and all of my personal stuff, pictures and——

Mr. Ehrlichman: I think this is all down in the Bill of Complaint.

The Witness: Yes.

Q. (By Mr. Gemmill): What was the value, the combined value of all of the articles that you lost in the fire?

A. I think under a thousand dollars; right around nine hundred to one thousand dollars would be a conservative estimate; very conservative.

Q. The list of your personal property that you listed in your Complaint——

A. Pardon?

Q. The personal property that you have listed in your Complaint in the second paragraph of the VIII cause of action is a list of all of the items that you lost in this fire?

A. Yes, it is.

Q. I don't think you stated the date of this fire?

A. The date of the fire—let's see: I should never forget that. I can't think.

Q. Well, was it——

A. Well, it was—I can't——

Q. In October?

A. In October, yes. I can't remember. It was the 11th, wasn't it? Yes, the 11th.

(Deposition of Jesse Hobbs.)

Q. The 11th of October of 1951?

A. Yes.

Q. And are these figures which you have caused to be set off at each of these items which you have listed in your complaint, do they represent the value of those articles?

A. Yes, it does, and they are conservative figures on them.

Mr. Gemmill: I think that is all.

Mr. Ehrlichman: Off the record for a minute, please.

(Discussion off the record.)

Cross-Examination

By Mr. Ehrlichman:

Q. Mr. Hobbs, these values that you have placed on this property in your complaint and also in this deposition are replacement values, aren't they, as to what it would cost you to replace all these things that you lost?

A. Yes, and it's a conservative price, I think.

Q. Would it be what it would cost you to go into a store now and buy the same articles for?

A. It would. It would, yes.

Q. What airline did you go to Alaska on?

A. Let's see. I believe I went to Alaska on the—I believe it was the Northwest——

Q. To Anchorage? A. To Anchorage.

Q. And then what from Anchorage to Naknek?

A. It was the——

Q. The PNA?

(Deposition of Jesse Hobbs.)

A. I think it the Pacific Northern flies out there; I am not sure.

Q. And you had these two bags with you, the Gladstone and the wide-topped bag; is that right?

A. Yes, that's right. And then a pack sack.

Q. A pack sack? A. Yes, also.

Q. What sort of a device was that?

A. Well, it's a regular packsack that you can throw over your back, you know, and it has——

Q. Shoulder straps?

A. Shoulder straps and so forth on it.

Q. About what volume would that hold?

A. It would—the volume? Let's see.

Q. What dimensions was it?

A. Let's see. The packsack, I have to take a look and see. (The witness produces a measuring tape.) It's about, well, it goes up and down your back and it hangs about, well, right around 36 inches long, I think; right around 30 to 36 inches long. And I imagine it would be in the neighborhood of 24 inches wide and it was the same in width.

Q. In other words, about two by two by three?

A. Yes, I imagine right round that—in that area.

Q. What did you have in there?

A. And it has——

Q. Soft goods?

A. Yes, I had, yes, work clothes.

Q. Did you have any other luggage at all when you went up to Naknek; when you went up to Naknek, besides those three pieces?

(Deposition of Jesse Hobbs.)

A. Yes, and then I had a duffel bag. There was a small duffel bag.

Q. Well, how big was that?

A. Oh, that only stood up about that high (indicating).

Q. About two feet? A. Yes.

Q. And it was round? A. Yes.

Q. Just a little pillow type duffel bag?

A. Yes, that's it.

Q. Any other luggage besides those four pieces?

A. No, only what I carried on my back.

Q. What was that?

A. My suit and coat and hat, and——

Q. Oh, you mean what you wore? A. Yes.

Q. Oh, I see. You didn't carry a suit over your shoulder? A. No, not over.

Q. Well, then, did any of this stuff come up by parcel post? A. Yes.

Q. Or express, or anything of that sort?

A. Yes; some stuff came up that way.

Q. How long after you got there did it come up?

A. Well, my wife—oh, after I got to King Salmon?

Q. Yes.

A. Oh, no; none after I came to King Salmon.

Q. You carried what you had from Anchorage to King Salmon then in these four pieces that we have described; is that right? A. Yes.

Q. Do you know the approximate weight of that luggage? A. That I don't know.

(Deposition of Jesse Hobbs.)

Q. Did you have to pay excess baggage on PNA?

A. You never, you never paid any—we were or had any excess—all our tickets went together. How they did that, I have no idea. I don't know how they did that; I don't.

Q. You don't know how much your luggage weighed? A. No.

Q. But in any event, it was contained in the Gladstone and a traveling bag, and a pillow sized duffel bag? A. And the duffel bag, yes.

Q. Where did you keep your things that you could not hang up on a rack?

A. Well, in my suitcases and—in my suitcases and then on the edge of my bed, and there was a rack up on top—you know, above the bed there was a metal rack, you know, and we had our clothes on that, and then——

Q. Well, I am speaking of things like stockings that you could not hang up?

A. Oh, I usually kept them in my suitcase.

Q. And that is the same for shirts?

A. Shirts and stuff, yes.

Q. And underwear?

A. Underwear, yes, and——

Q. And work clothes?

A. Yes, my work clothes.

Q. And your parka and your jacket and your clothes hung up?

A. Yes; clothes hung up.

Q. Do you know a man named Lee Post?

(Deposition of Jesse Hobbs.)

A. Lee Post?

Q. Was he the camp manager while you were there?

A. No, I can't—I know Mr. Peterson, Pete Peterson. He was the camp manager, I think.

Q. He was a Gaasland employee?

A. Yes. He was a Gaasland employee.

Q. And his job was to supervise the lodging and the feeding, is that right?

A. Yes, all of Gaasland's work, yes; all of the camp and the, all of the—I think he was superintendent of the construction out there, and——

Q. Now, I am speaking of the man that was just the camp manager for the lodging facilities there. Do you recognize Lee Post as that man's name.

A. I couldn't tell you.

Q. In any event, the person that ran the mess hall and ran the rooming facilities was a Gaasland employee, was he not?

A. Now, that I don't know. I couldn't say, state that for sure.

Q. In any event, it wasn't a Haskell employee?

A. That I could not tell you either.

Q. You don't know?

A. Whether he was a Haskell or a Gaasland, I don't know.

Q. Didn't you know all of the Haskell employees personally?

A. I knew—yes, I knew Ferrere, Jules Ferrere.

Q. Well, didn't you know all the Haskell employees?

A. Yes, I knew——

(Deposition of Jesse Hobbs.)

Q. Were any of them in charge of the lodging facilities there?

A. I never saw the payroll. I don't know how the payroll was paid out, so I couldn't say; and I don't say that I could be an authority on it.

Q. You were only there for a period of about three weeks before the fire, is that right?

A. Yes; about three weeks before.

Q. Did you ever stay at the Sky Martel while you were there? A. No.

Q. You moved right into the barracks?

A. Yes, I did.

Q. And some of the Haskell employees were already in the barracks, is that right?

A. Yes, they were.

Q. You were one of the last men to arrive?

A. Yes, all but Jules Ferrere, and Louis Ferrere, and probably some sheet metal men were there and some roofers, as far as I know.

Q. They were already well established there and had lived there about how long?

A. Since the job started; and I don't remember when the job started.

Q. It had been a matter of some months?

A. I imagine so. I would say that, yes.

Q. Did you ever have cause to prepare an inventory of the stuff that you took to Alaska prior to your arriving in Naknek?

A. Before I went to—

Q. Prior to your arriving in Naknek?

A. Yes, I knew I—take inventory? I know.

(Deposition of Jesse Hobbs.)

When I am going out like that, you always when leaving home you take it to know what you have along with you.

Q. Did you prepare a written inventory of what you were taking? A. A written inventory?

Q. A list.

A. No, I can't say that I had prepared an inventory, no, sir.

Q. Did you at any time prepare a written inventory of your belongings prior to this fire?

A. No, I can't say that I had.

Q. In other words, the listing that you have given us of what you had there is from your own recollection at this time; is that right?

A. That is from what I know that I had along with me, yes.

Q. As best you can remember it now?

A. I did at the time of the fire, and I did at the time of the fire because Mr. Ferrere told us to make a list of all our personal effects that we had of all our complete loss.

Q. And when did you do that?

A. We did that, I think it was the following day after the fire, which was for Jules Ferrere, the superintendent for Haskell.

Q. He asked you to do that?

A. Yes, the superintendent for Haskell.

Q. And then when you did that you called upon your own recollection of what you had, rather than any inventory that you had written down; is that right?

(Deposition of Jesse Hobbs.)

A. Yes, from what I knew that I had along with me.

Q. And what did you do with that list that you prepared?

A. That list was forwarded to the Union Local in Anchorage, Alaska.

Q. Didn't you turn it in to Haskell?

A. I think we did, and I think that they turned it in to—I am just trying to remember for sure.

Q. You don't know where the list is? You don't know for sure where the list is?

A. I made a list. I think Haskell got a list, and I think the Local down there.

Q. And was the complaint drawn from one of those lists? A. Yes, it was.

Q. Which one?

A. Well, both of them were identical, when we made them out. When we made them out we made them identical.

Q. Did you ever have any cause to make a complaint to any one at the camp regarding the living facilities before the fire? A. Yes.

Q. To whom did you complain?

A. We complained to——

Q. Now, I want to know whom you personally complained to?

A. You want to know who I personally complained to?

Q. That is right.

A. To the—yes, to the shop steward.

Q. And who was he?

(Deposition of Jesse Hobbs.)

A. His name was Mike Cullinane, Mike Cullinane.

Q. He is one of the plaintiffs in this case?

A. Yes, he is.

Q. He was living with you there?

A. Yes, he was.

Q. And what was it that you personally complained about?

A. Well, about the—a number of times about the food there and then they changed the cooks there.

Q. And do you know offhand who the shop steward relayed your complaint to?

A. Well, not—of course, there was not only my complaint; it was the complaint of the group as a whole.

Q. And to whom were those complaints made?

A. They were taken to Mr. Pete—the superintendent.

Q. The Gaasland man?

A. Yes; and taken to Jules Ferrere. And they both met together and they all met together.

Q. The cooks were Gaasland employees, weren't they? A. Yes, I think they were.

Q. And so then when the shop steward relayed the complaint, why Gaasland made a change, is that right?

A. Yes, we made the complaints and the shop steward took care of them.

Q. Is there anything else that you can recall complaining about besides the food? A. Yes.

(Deposition of Jesse Hobbs.)

Q. I am talking about you, personally, now?

A. Me, personally?

Q. Yes.

A. No. Oh, that was about clean sheets, a couple of times they were late in getting the sheets in.

Q. The bull cooks were?

A. Yes; something to that effect.

Q. And so you made a complaint about that?

A. Yes.

Q. Anything else that you can remember?

A. No.

Q. In other words——

A. It was an established camp, and everything functioned fairly well, I would say; very well, I would say.

Q. Did you leave any possessions with your friend in Anchorage when you went up to Naknek?

A. No, I didn't.

Q. What is his name again? A. Oshiem.

Q. Will you spell his last name for me?

A. O-s-h-i-e-m.

Q. And where does he live?

A. He lives over in Kennewick now.

Q. In the State of Washington?

A. In the State of Washington; that's right. At least, the last I heard, he was; but he wasn't working over there, so I don't know whether he would be at Kennewick at the present, or not.

Q. From time to time did the heating stoves in your barracks need cleaning out?

A. Yes, they did. The type of oil they used was, it didn't burn too well.

(Deposition of Jesse Hobbs.)

Q. As a matter of fact, they were turned up high most of the time anyway, weren't they?

A. Yes, they didn't—I don't know. In fact, I don't exactly know whether they were high most of the time. But if they were turned down to—the oil was of such quality that they would soot up, and it would soot the pots and the whole thing, and they would have to be cleaned.

Q. And who did that cleaning?

A. That cleaning—the people who—Haskell took care of all—I don't know about the pots, inside of the pots.

Q. Do you know who did the cleaning out?

A. The cleaning out—you mean inside the fire pots?

Q. Yes.

A. Well, I never saw them do it, no.

Q. And you don't know?

A. I never saw them do it; no, I never saw them do it. I couldn't say as to that, because I never saw them do it, no.

Q. Okay. Was there any reason for taking dress clothes to a place like King Salmon?

A. Yes, there would be, due to the fact that wherever we go we take our possessions along with us. Like my wife, and my home is down here in Seattle,—

Q. You didn't expect to dress up in Naknek, I take it, did you?

A. Well, I don't see why not. If you go to Naknek in the evening, or anything, you clean up and—

(Deposition of Jesse Hobbs.)

Q. Did you ever go to Naknek in the evening?

A. Yes.

Q. Did you dress up in your blue suit?

A. Well,——

Q. And your Stetson hat?

A. Well, I wore it down there, and, naturally, I had no place to leave it.

Q. The blue suit?

A. Pardon?

Q. Did you wear your blue suit when you went to Naknek in the evenings?

A. Prior to the fire? I don't know. I never—I hadn't been to Naknek.

Q. Well, that's what I was just asking you—whether you ever did go to Naknek?

A. No, no.

Q. As a matter of fact, you didn't go, did you?

A. Not before the fire, no. I would say no, I didn't go.

Q. If you had gone, was there anything to do?

A. Yes, there were people living in Naknek. There were stores and there were bars, just like in a regular, normal town.

Q. As a matter of fact, your work clothes would have been good enough for the social life of Naknek, wouldn't they?

A. Well, I don't know. It's hard to say. Personalities——

Q. Come, now: be fair with us. Isn't that correct, Mr. Hobbs, that the——

A. I would say no. It might be, and in a way

(Deposition of Jesse Hobbs.)

it might not be. If you go to church or if you go down there to—for instance, if you go down there to go any place else, or if you are going any place as a rule, when you are going any place you usually clean up and look half-way civilized.

Q. Well, in any event during the three weeks that you were there prior to the fire, you never found any occasion to wear your blue suit; is that right? A. That is right.

Q. Or your oxfords?

A. No, I guess not; I would say no.

Q. Or your white shirt? A. That's right.

Q. Or your neckties, for that matter?

A. That's right.

Q. Who furnished you bedding?

A. Well, that is—whether it was Haskell or whether it was——

Q. Gaasland?

A. ——Gaasland, how they operated that, I would—that deal there I couldn't tell you.

Q. Well, as a matter of fact, you don't know how this fire started, do you?

A. No, I was not there at the time.

Q. And you didn't see anything afterwards when you did get there that caused you to be certain as to what started the fire, is that right?

A. Well, what I saw could have started the fire? Well,——

Q. I am not interested in scuttlebutt right now; just what you, yourself, know.

A. What I saw was there, this place—the place

(Deposition of Jesse Hobbs.)

was completely on fire. The fire was coming out through the front and coming out through the back. We went all the way around it.

Q. And that didn't help you to know what started it?

A. That's right; I wouldn't have any definite idea, personally.

Q. Have you experienced a loss of all of your personal possessions, or had you experienced a loss of all of your personal possessions previous to this?

A. Did I experience a loss?

Q. In other words, had you been involved in a fire, or some other catastrophe where you lost everything you owned before?

A. No, I can't say that I have.

Q. How is it then that you happened to have acquired everything that you had in 1950 except your teeth?

A. Everything I had with me?

Q. Yes.

A. Because it was all new. We came down from—in 1950 we came down from Anchorage. We had been living in Anchorage, and—now, how come I happened to buy all that, was due to the fact that I happened to buy the stuff.

Q. You just happened to go out and buy all new shirts and all new pants and all new work clothes and all new clothes and a new hat and a new suit and a new overcoat and a new bag?

A. That is right.

(Deposition of Jesse Hobbs.)

Q. Everything new in 1950?

A. And—no, I had other clothes besides that.

Q. What other clothes did you have?

A. I had a suit. I had more shirts, and I had stockings, and well, even overalls I had down here yet.

Q. In Seattle? A. Yes.

Q. You had lots of old clothes in Seattle?

A. Well, I wouldn't say they were old clothes. They were average clothes.

Q. But none of those average clothes were in this fire?

A. No, because some of them happened to be down here.

Q. The only things that were in this fire were clothes that you had acquired within the nine months prior to this fire?

A. That's right. Well, you take good clothes because you take clothes that are going to stand—you know, that are good clothes, along with you.

Q. What kind of a razor did you have when you lived in Anchorage before?

A. What kind of a razor?

Q. Yes.

A. I would say it was straight edge, and I had a—one of these, well, there was a regular safety razor.

Q. Did you have an electric razor?

A. No, I never used an electric razor before.

Q. How long have you worked as a pipefitter?

A. Well, since I got my card in 1942.

(Deposition of Jesse Hobbs.)

Q. Where did you work as a pipefitter in Anchorage before you moved to Seattle with your wife?

A. Before I—where I worked before I moved to Seattle?

Q. Yes.

A. Yes, I was—in '46 I went up in the fall of '46, and I came back down to the States, and then we moved to Anchorage.

Q. Have you ever worked up around King Salmon and in that type of country before?

A. Why, I hadn't worked in King Salmon, no.

Q. Had you worked in any of these outlying projects there?

A. Let's see. Yes, I worked, I was down at Foreland, and I was down toward Fire Island.

Q. You knew what kind of conditions you were going to find at Naknek, pretty much, didn't you?

A. What kind of conditions?

Q. Yes.

A. As far as weather or what kind of conditions?

Q. I mean weather and terrain, and, oh, the type of job you were going on, and the type of work you were going to be doing, and all of that?

A. Oh, yes; all that is normal, yes.

Q. Everything that you had with you was either brand-new or as good as new, is that right?

A. Yes; it was all in good shape.

Q. You didn't have a single thing with you but what it was as good as new?

(Deposition of Jesse Hobbs.)

A. Well, yes, that is right; I would say yes.

Q. And everything that you had with you that you had worn for a period of time you considered, nonetheless, to be of the same value as a brand-new garment; is that right?

A. The value as it would be of a new one, as far as replacement, yes.

Q. But not as far as actual intrinsic value was concerned?

A. I don't see why not, because——

Q. Would you be willing to pay the same price for that Stetson hat—\$15.00 for that Stetson hat, as \$15.00 that you paid for it when it was brand-new, for a hat that somebody had worn for six months?

A. Well, as far as worn it,—if somebody else had worn it, I don't think I would want to buy it.

Q. No. And the same thing goes for——

A. As to that, the valuation to me would be for me to replace it; it would be——

Q. Well, we are not talking about replacement now. We are talking about what you paid, by buy and sell?

A. Buy and sell, yes. It was a good hat, and in good condition, and I had——

Q. And if a stranger had worn it six months, and I offered it to you, you would have paid the same price as for a new hat—is that right?

A. I don't buy—I wouldn't buy clothes that somebody else had worn.

(Deposition of Jesse Hobbs.)

Q. So you'd place a much lower value on it than the price of a new hat? A. No.

Q. Because somebody else had worn it?

A. No.

Q. Isn't that right?

A. Not as far as its valuation, because it might be worth to him \$15.00, but it probably would not be worth to me \$15.00.

Q. And the same for the sox that he had worn?

A. Well, you wouldn't—say I'd worn a pair of sox once, you wouldn't want to buy my sox. It's the principle of the thing.

Q. Well, let me ask you about your dentures. You say that they cost you \$150.00 when you got them? A. Yes.

Q. Did that include extractions?

A. Well, that I don't remember. I think I had most all of them out, all but a couple.

Q. There were some extractions at that time?

A. Oh, there was a couple of extractions.

Q. Included in the amount of \$150.00?

A. Now, that I couldn't tell you.

Q. And did you pay Dr. L. R. Clark cash, or was it on time? A. I think cash.

Q. There were no carrying charges in that, then?

A. No.

Q. How long had you had these fly rods?

A. Oh, I got those up there—or down here, rather. It was right around less than a year.

Q. You bought them both at the same time?

A. Practically, yes, at the same time.

(Deposition of Jesse Hobbs.)

Q. How did you happen to do that?

A. Due to the fact that all my fishing gear up there, I had sold that, or gave it away when we came down, because if we sent it down air freight, —I wasn't going to pay air express on a bunch of stuff.

Q. That goes for all of your fishing gear, then?

A. That goes, yes, for most all of my fishing gear.

Q. Had you ever used the rods before going back to Naknek?

A. Yes, I fished with them around Anchorage in some of the big lakes, up at Big Lake.

Q. How many times, do you remember?

A. And up at—oh, I fished around eight or ten times.

Q. When you went from Anchorage to Naknek, the things like the alpaca jacket and the parka and the work shoes, all of that, you checked through with your luggage, is that right?

A. Yes; it all went through with my luggage.

Q. They were inside of your luggage, then?

A. Yes, with my luggage.

Q. The things which you have stated in your complaint, in the cause of action which pertains to you, are all true, as you believe? Is that correct?

A. Yes, sir.

Q. And that goes for the answers to the interrogatories which you signed? A. Yes.

Q. And as far as who provided the living fa-

(Deposition of Jesse Hobbs.)

cilities and maintained them and inspected them, you just don't know, is that right?

A. That's right. I don't—we just—I really couldn't, because I never saw any of—I really couldn't put my finger on it and say that this man furnished this or that that man furnished that; I couldn't tell you.

Mr. Ehrlichman: I think that is all.

Mr. Gemmill: I have just one more question.

Redirect Examination

By Mr. Gemmill:

Q. Are you the same Jesse Hobbs that is named as one of the plaintiffs in this action?

A. Yes.

Mr. Gemmill: That is all.

Mr. Ehrlichman: I will waive the signature, if it is all right with Mr. Hobbs, to this deposition.

Q. (By Mr. Gemmill): Mr. Hobbs, will you waive your signature to this deposition that will be written up by the court reporter?

A. Yes, sir, but I don't quite get the word "waive." Would you explain it to me, sir?

Q. If the record shows that you waive the signing of this deposition, it will be sent up to the Court at Anchorage without your signature. It will just be certified to by the court reporter who writes it up.

A. Yes.

Q. If you do not wish to waive the signing of the deposition, you will have to come back and read it.

A. Oh.

(Deposition of Jesse Hobbs.)

Q. And then sign it.

A. No, I will waive the signing.

Q. We must get permission from you, personally.

A. As far as I am concerned, yes, I will waive it.

Q. You will waive your signature to this deposition, then? A. Yes.

Mr. Gemmill: And the record will show that both counsel agree to that.

Mr. Ehrlichman: That is correct.

Mr. Gemmill: That is all. Thank you.

(Witness excused.)

(Thereupon, the deposition of the witness, Jesse Hobbs, was concluded.)

[Endorsed]: Filed Jan. 4, 1955.

Mr. Butcher: * * * Now, I would like to offer Mr. Hobbs' deposition again, for the rest of his testimony.

The Court: Very well, but please understand, the Court is not requiring you to do it.

The Court: Very well. (Laughter.)

Mr. Butcher: Yes. I understand.

The Court: Very well, then, the whole of the deposition may be admitted in evidence. I would not require, though, that it be read.

Mr. Butcher: Mr. Bell, will you stipulate with me that the whole deposition—all of it—go into evidence without being read?

The Court: No such stipulation is necessary. It has already been admitted upon your motion.

Mr. Bell: Now, Your Honor, I take it then that I have nothing to raise. The whole deposition, cross-examination and everything is in and you will read it yourself?

The Court: Yes.

Mr. Bell: Without us having to read it to you?

The Court: I assure you that the Court will read it.

Mr. Bell: Thank you. That's all. I am sure you will because I know I would if I were in your position. I would want to know it all. [252]

Mr. Butcher: Now, Your Honor, I have one other witness, and that witness will take probably two or three minutes, and then the plaintiff intends to rest.

The Court: Very well, you may call your witness.

Mr. Butcher: Maybe I'd better make this offer, first: Mr. Holbrook, one of our plaintiffs, is in Salyersville, Kentucky, more than 100 miles from this court. Under the Rule which we have discussed considerably, one of the rules is that a witness, in order to use his deposition for its full value, must be more than 100 miles from the court. My offer now is to prove, by myself, who received a letter just a couple of days ago from Mr. Holbrook stating that he could not be here for the trial. I want to get into the record by my testimony that he is in Salyersville, Kentucky, more than 100 miles from the court.

The Court: Do you have a deposition from him?

Mr. Butcher: I have only a letter which I received.

The Court: The purpose of it is to permit the deposition to be used?

Mr. Butcher: Well, his deposition is among those, Your Honor, already has in the record.

The Court: Oh, I didn't notice that.

Mr. Butcher: Mr. Holbrook's is there.

The Court: Well, surely you may make such proof; unless it was taken by stipulation. If taken by stipulation, that [253] wouldn't be necessary.

Mr. Butcher: It is exactly like all these others which Mr. Bell has required. Your Honor may have noticed on——

The Court: I find no deposition of Holbrook in the file, here.

Mr. Butcher: It is among the interrogatories, Your Honor.

The Court: Well, they have already been admitted, haven't they? All the interrogatories?

Mr. Butcher: Well the interrogatories for each man who has appeared here as plaintiff. Mr. Holbrook did not.

The Court: That was not my understanding. We've admitted all the interrogatories.

Mr. Butcher: All right, then.

The Court: Let's see, we checked that——

Mr. Bell: Your Honor, was there one there from Mr. Holbrook?

The Court: Just a minute. I believe so because there is one from everyone except Smith, who I

understand has since died. Let me see here just a minute. (Looks through file.) As I have it, your motion, Mr. Butcher, was to admit all of the interrogatories taken as depositions and the further oral evidence re matters contained in such excepting the proof of loss excluded. So your motion which was granted [254] included all the interrogatories.

Mr. Bell: I'd permit Mr. Butcher to testify without even being sworn if he wants to that Mr. Holbrook is in Salyersville, Kentucky.

The Court: I see no necessity of it as all of the interrogatories are before the Court. Well, perhaps you wish to protect the record. Very well; very well.

(Mr. Harold J. Butcher, attorney for the plaintiffs, was then duly sworn, took the stand and testified as follows:)

About the 20th of December I wrote a letter to Mr. Holbrook who resides with his brother, a State Senator, in Salyersville, Kentucky, asking him if he—notifying him of the date of this trial, and asking him if he could be present. He wrote me a letter and told me that for financial reasons, he could not come to Alaska from Salyersville, Kentucky, and be here at the time of this trial. And I make this statement on his behalf, Your Honor, to show that at the time of the trial he was more than 100 miles from the place where the trial has occurred.

The Court: Do you wish to cross examine, Mr. Bell?

Mr. Bell: No, Your Honor.

The Court: Very well.

(Mr. Butcher then left the witness stand.)

Mr. Butcher: The plaintiff now rests.

The Court: May I inquire at this point, Mr. Butcher, what proper disposition do you suggest be made as to W. Van Smith. I understood from the testimony that he is now deceased. No proof has been offered on his behalf, so I presume it would be in order to dismiss him as a party plaintiff?

Mr. Butcher: Well, I was going to make a suggestion, Your Honor, and I overlooked doing so. Mr. Van Smith was killed here by being stabbed in the back by a woman more than two years ago. The woman was tried on second-degree murder charge and was acquitted——

The Court: That would hardly be material; would it?

Mr. Butcher: Mr. Van Smith left a twelve year old child, and the Plumbers' Union has sought my advice as to whether that child could enter into the suit in place of his father, and it has been my advice that he could not. Maybe I am wrong, but in any event, his claim is only about \$500, the smallest one of all, and I was going to propose to Mr. Bell, if he would so stipulate, that in the event there is a judgment on behalf of the plaintiffs that Mr. Van Smith's claim be included in the judgment.

Mr. Bell: I would not have the authority to make a stipulation like that. As Mr. Butcher knows, I am just "carrying water" here. The key counsel are in Seattle and [256] they did—they know of course that Mr. Van Smith—is that his name?

Mr. Butcher: Van Smith.

Mr. Bell: Mr. W. Van Smith is dead, and there is no revival as to him. The case has never been revived.

The Court: Survival!

Mr. Bell: Well, it does survive very possibly, but it has never been revived under the statute. The action might survive—it's question I would certainly seriously urge—it is one that does not survive death of the plaintiff, but that hasn't come up yet, but there has never been any effort to revive the action under the statute.

The Court: Well——

Mr. Bell: Now, Your Honor, at this time we might put that right square up to the Court. I have a motion I was going to make and then—that would clear this issue and present it to you.

The Court: Well, I would rather dispose of this, first, Counsel.

Mr. Butcher: Let me say just one thing, then, Your Honor. It is my understanding of the statute that the action survives to the widow and not any young person. May be I—that is the reason I haven't given it any evidence here as to Mr. Van Smith's claim, and don't intend to.

The Court: I fear then that he must be dismissed as a [257] party plaintiff unless Counsel is willing to stipulate as you suggest.

Mr. Butcher: I wonder if we might defer that, and it is possible that Mr. Bell and his counsel in Seattle might stipulate that that small claim could be paid, if the plaintiffs were successful. They may not. It is a case that they might stipulate to.

Mr. Bell: I was just fixing to arise and move to dismiss it for want of prosecution. There is no evidence in the case. When you mentioned the matter there, I had it noted as number three——

Mr. Butcher: I won't propose that motion—
Mr. Bell——

Mr. Bell: I would so move to bring this matter directly before you.

The Court: Well, there being no proof submitted upon behalf of the heirs of W. Van Smith, even if there were a survival—which is very doubtful, the case must be dismissed as to such plaintiff.

Mr. Bell: Now, Your Honor, since the evidence of the plaintiffs are all in, I have a series of motions that I want to make to put the record straight: First, I want to move to strike all the testimony, based upon the theory that I argued at the outset of this case: It was an improper joinder of parties plaintiff. And that the complaint did not state a cause of action in favor of any of the parties against [258] this corporation defendant. My second is: To strike the interrogatories. The evidence shows that they were never served on me; and the answers were filed in court but never served on me. Another reason to strike the interrogatories is that my position is they are improperly introduced. Your Honor knows my argument on that and I won't repeat it. Now then the third—the fifth proposition is: to dismiss the entire case for the reason there is no evidence of negligence on the part of the defendant. Now, in this case, the best that could possibly be said about the evidence is that the bull

cook, who was staying at the—around the general contractor's place—I don't believe he completely said that he was staying there, he said at the place provided for them by Gaasland, was where he must have been staying, and there is not a scintilla of evidence to connect this bull cook in any way with the Haskell Plumbing and Heating Company. The Haskell Plumbing and Heating men all stayed at the one place. They all testified to that; well, I wouldn't say everyone was asked the questions, but those that were asked stated they all stayed there. There was no bull cook stayed there. Now, if there was any negligence at all, it was somebody whom nobody knows, that mixed some gasoline and some oil that shouldn't have been mixed. Now, that's the end of all the evidence there is of any negligence. Now, there isn't a connection in the world with the Haskell [259] Plumbing and Heating Company with this negligence. And the most that can possibly be said—if there was any negligence—it was the negligence of some bull cook that one man stated pretty clearly was a man from the Gaasland place—the Gaasland Company. Now the deposition that Mr. Butcher has introduced of Mr. Hobbs—makes the statement:

“Was he the camp manager while you were there?

No, I can't—I know Mr. Peterson, Pete Peterson.

He was the camp manager, I think.

He was a Gaasland employee?

Yes. He was a Gaasland employee.

And his job was to supervise the lodging and the feeding, is that right?

Yes, all of Gaasland's work, yes; all of the camp and the, all of the—I think he was superintendent of the construction out there, and——

Now, I am speaking of the man that was just the camp manager for the lodging facilities there. Do you recognize Lee Post as that man's name?

I couldn't tell you.

In any event, the person that ran the messhall and ran the rooming facilities was a Gaasland employee, was he not?

Now, that I don't know. I couldn't say, state that for sure.

In any event, it wasn't a Haskell employee?

That I could not tell you either.

You don't know? [260]

Answer: Whether he was a Haskell or a Gaasland, I don't know.

Didn't you know all the Haskell employees, personally?

I knew—yes, I knew Ferrere, Jules Ferrere.

Well, didn't you know all the Haskell employees?

Yes, I knew——

Were any of them in charge of the lodging facilities there?

I never saw the payroll. I don't know how the payroll was paid out, so I couldn't say; and I don't say that I could be an authority on it.

You were only there for a period of about three weeks before the fire, is that right?

Yes; about three weeks.

Did you ever stay at——”

(Now that goes off on another matter.)

Mr. Bell: Now, Your Honor, I don't think it is a matter that needs argument. There is just no evidence, not the slightest to connect the defendant with any negligence, here.

The Court: First, we might without hearing from you, Counsel, dispose of this first motion. The motion to dismiss for improper joinder of parties plaintiff having heretofore been ruled upon—will be denied.

The motion to dismiss because the complaint fails to state a cause of action will likewise be denied.

Now turning to the question about these interrogatories, [261] and the question of the motion to dismiss for want of evidence to connect the bull cook as an employee of the defendant company—I should like to hear from Counsel.

Mr. Butcher: Well, in connection with the interrogatories, Your Honor, it is possible that they were not served upon Mr. Bell. As Your Honor will recall, the Court didn't pass upon the question of the interrogatories and did not require, in the face of my objection, that I even have them answered. But, I assured Mr. Bell, as he has known ever since, that I went ahead and got them answered and that I filed them promptly in the file and gave it to him, and all the time he knew they were there. The reason why they were not served upon him is that I had to hunt these men up all over the country to get the deposition—and go sometimes before the postmaster and other types of persons——

The Court: Just a moment. I think I can in-

interrupt you here on that. I am just examining these. If you will excuse me, Mr. Bell. Now take your first one. It appears in the file—Jesse Hobbs—at the bottom of the interrogatories, I find this:

“Receipt of Copy Acknowledged this 23rd of February, 1954. Bell & Sanders, Attorney for Defendant.”

The next one is: [262] (Searches through file) Ben Holbrook. The same endorsement. (Continues to turn file.) The next one is Lyle Franz. The same endorsement.

Mr. Bell: Are they all the same?

The Court: Yes, sir.

Mr. Bell: By whom? Your Honor.

The Court: I'll look back here. (Turning the file pages back.)

Mr. Bell: I don't have it in my file.

The Court: There is an initial after the word Bell & Sanders, but I am frank to say I can't read it. Perhaps I can on this next one. I'll look again. “Bell and Sanders.” It looks like WHS. Would that be Mr. Sanders' initials?

Mr. Bell: That would be Mr. Sand——

The Court: “WHS”.

Mr. Bell: “WHS” would be his initials.

The Court: That is what it appears to me to look like. Now the same——

Mr. Bell: I believe I accepted service on one—— one answer.

The Court: Well, if you will permit me to continue here. The same thing appears as I said on Franz. With the same initials. The next is Jimmy

Weeks. The same endorsement on the 2nd of April '54. Bell and Sanders. It also looks like "WHS." The next one is [263] Michael Cullinane. The same endorsement appears under date of April 2nd with the same initials. The next is Thomas Judson. The same endorsement on the same date. The same initials. The next is Roy Callaway. The same endorsement on the same date; without any initials. The next, and think the last, is Tom Mulcahy. The same endorsement; the same date; and the same initials.

I think that disposes of your motion, Mr. Bell.

Mr. Bell: Your Honor, I explained we don't have one of those in none of the answers——

The Court: The record speaks for itself. You have acknowledged receipt of a copy.

Mr. Bell: It does.

The Court: I would like to hear from you then. This motion regarding interrogatories is denied. The only other question then is—the motion to dismiss for want of evidence.

Mr. Butcher: For the purpose of now arguing this motion, Your Honor, I have prepared an argument for the final part of the case. I will not present my entire argument. I will at this time only present sufficient authority to show you this motion does not lie well, and should not be given any consideration whatever.

We have a situation here in which a contractor entered into a contract with his employee to perform certain [264] functions for him, in addition to his salary. Separate and independent function of

furnishing his board, and the furnishing of the room. That is a written contract. The contract of his employer furnishing a room—call them quarters or whatever you will. Along with such quarters, he naturally assumed that they had to furnish comfortable and properly heated, and properly sanitized, and properly cared for quarters. Now that was contracting obligation.

He could enter into a contract with the independent contractor, in some circumstances, to sublet part of the work that he was required to do under his contract through an independent contractor, and any damages caused by that independent contractor couldn't make the primary contractor liable. But, a written contract, Your Honor, takes the rule of independent contractors out of the picture entirely, and the law—and the law everywhere—supported by a multitude of ruling cases, holds that the contractor may not delegate those parts of a written contract, which he has made with his employee, to a third party to perform. He can't get out of it that way. I give, Your Honor, the list of citations.

The Court: Well, your point would be that it makes no difference——

Mr. Butcher: That is true.

The Court: ——whether this bull cook was an [265] employee of the general contractor, or of Haskell Plumbing and Heating?

Mr. Butcher: It makes no difference.

The Court: I'd like to hear from you on that.

Mr. Butcher: Do you want to hear——?

The Court: Yes. I would like to hear from you on that.

Mr. Butcher: Referring, Your Honor, to Volume 27, American Jurisprudence, page 525. Under the general heading of "Nonperformance of Absolute Duties of Employer" "—Under some circumstances, duties are imposed upon an employer which he cannot delegate to another; and where this is the case, he is liable for their nonperformance even though he employs an independent contractor to perform the actual work. * * * Likewise, one who, by a specific agreement, undertakes to do some particular thing, or to do it in a certain manner, cannot, by employing an independent contractor, avoid responsibility for an injury resulting from the nonperformance of any duty or duties which, under the express terms of the agreement or by implication of law, are assumed by the undertaker. This doctrine has been applied with reference to many kinds of agreements."

I call Your Honor's attention to Volume 35, under the general heading of "Master and Servant" at [266] page 533.

The Court: What volume?

Mr. Butcher: Volume 35, American Jurisprudence, at page 533 under the general section head of "Protection of Employee's Health; Duty to Furnish Food, Clothing, or Shelter." And the first paragraph refers to the fact that most States have now passed statutes which provide when men are

away from their place of residence the law of protection provides that the employer furnish him food, clothing, and lodging in such a manner and by such means that it would be acceptable and be similar or equal to the type of living they had in their residence.

But, the second paragraph gives this point exactly: "If the contract of employment contemplates provision by the employer for food, clothing, and shelter for the employee, any neglect of the obligation thus assumed will render the employer liable for injuries sustained by the employee, or if the employer undertakes to provide for the employee he will be liable if he furnishes an unsuitable lodging place, impure water, or unfit food."

Under the terms of the contract, Your Honor, he has provided for that and he is liable. He can't go and hire somebody else to do the work for him and then get out of liability on that grounds. That man—that bull cook—or Gaasland, himself, became the agent of Haskell Plumbing [267] & Heating Company for the purposes of furnishing those lodgings—and for the purpose of furnishing those foods—in exactly the same sense as though he were a direct employee. Because it is one of the non-delegable duties and cannot be assigned. It is part of the written contract; it is part of his guarantee to these men. And he didn't fulfill it. And, therefore, he is liable regardless of who did the work.

Now, these are just the basic citations, Your Honor, which are brief. I am not going to take the time to go into them at this time. I ask, Your

Honor, on the basis of what I called your attention to now to overrule this motion, so that the trial may continue. This matter could have been gone into in far greater detail than—by eminent authority at the time. With this one further thought, Your Honor. If, if these men had chosen to sue Gaasland, and not Haskell, then counsel, or somebody else, would be in court showing that there was no contract with Gaasland—and no duty on Gaasland—and that would end it.

Mr. Bell: Your Honor, if they had—These cases that he refers to had no more to do with this lawsuit than the law of Arson.

The Court: I can't agree with that statement, Counsel. [268]

Mr. Bell: Well, I can. I think you will when you——

The Court: No, sir.

Mr. Bell: Because—now if he had furnished food—or caused someone else to furnish food, then, like he said he would in the contract, he would furnish them board and lodging. Now, just like he read that. If he had furnished them bad food—or had furnished them bad lodgings. They would have some complaint about it. Now if that was non-delegable, which I don't believe that part of it can be said. The only thing he'd be liable for if he was negligent in attempting to furnish quarters.

Now, supposing he was traveling through the country—now just to see why I say this has nothing whatsoever to do with this case. Suppose he went into the nicest hotel in this town, and he had those

men with him, and he took them to a nice place, and they got food poisoning. Do you suppose he would be liable—or would the hotel who served them?

The Court: Well, that is certainly beside the point.

Mr. Bell: Well, that is what happened here.

The Court: No.

Mr. Bell: Oh, yes. Somebody else caused some damages, Your Honor. I am not going to argue it. I just stand on it. [269]

The Court: Well, surely we will agree to this, Counsel. The obligation to furnish quarters—living quarters would manifestly include an obligation to heat those quarters. Surely it can't be disputed that to furnish quarters would mean just a shell—a place for them to live. It would have to be heated; a comfortable place to live. And that obligation appears from this contract. There appears to be evidence of negligence sufficient to establish a *prima facie* case. The only question which bothered me was the very one which you raised. Whether it was necessary to show definitely that this bull cook was an employee of Haskell, and that may be inferentially shown. It is doubtful whether it was definitely shown. But I am quite satisfied under the authorities cited by Counsel, which I do recall, as a rule, that it does make no difference, and that this bull cook must be held for the purposes required by this contract to be the agent of the Haskell Plumbing and Heating Company.

Therefore, the motion to dismiss will be denied.

Mr. Bell: Now, Your Honor, I have exception, please. Now, let's see. Does that cover motion to dismiss as to all of the remaining defendants involved in that motion——

The Court: That is the all remaining defendant. [270]

Mr. Bell: You dismissed one. Or plaintiff, I mean. Plaintiffs. You dismissed this as to Smith?

The Court: Well, yes.

Mr. Bell: This motion, then, which you are overruling now was directed against all of the plaintiffs. Now, Your Honor, I have depositions for the——

The Court: Now, wait a moment. You say my motion was directed against all of the plaintiffs?

Mr. Bell: Your order. My motion directed against all of the plaintiffs to dismiss the full amount—the whole thing.

The Court: Well, your motion was to dismiss against all of the plaintiffs remaining except Smith.

Mr. Bell: That is right.

The Court: Well, of course.

Mr. Bell: I just wanted to——

The Court: I so understood it. Yes.

Mr. Bell: I just wanted the record to be clear on that.

Now, Your Honor; I have two depositions to introduce in evidence, and I'll either read them at this time in their entirety, or I'll do it to suit you; anyway you want it done. Now, they are very definite and certain depositions. The originals are before you and I have copies of them here, and I presume

I better offer to read [271] them to you and let Mr. Butcher——

The Court: Now, would you suggest whether it would be all right for the Court to have them read. In a jury trial, of course, those things are essential, but in a non-jury case I have felt that it is discretionary with the Court, unless the parties insist that they be read, either party, that it is quite sufficient if they be introduced and read by the Court—to save time in court procedure. I certainly assure Counsel that I will diligently read them.

Mr. Bell: Well——

The Court: And unless either counsel insist that they be read, I would prefer to read them at leisure.

Mr. Bell: The only——

The Court: Because we have only about five hours of court time available, but I have every evening available, and I work every evening.

Mr. Bell: Well, Your Honor, that is perfectly all right with me. So long as you will consider them as fully before the Court in their entirety. And then I would make my motions to follow them——

The Court: Yes. Indeed I so agree, and I also agree to read them before hearing your argument in the case.

Mr. Bell: Well, possibly that would——

The Court: So, I could do that this evening.

Mr. Bell: Oh. All right. You have the originals there. [272]

The Court: Yes. They are here. You are offering them then at this time?

Mr. Bell: I am offering both——

The Court: Will you refer, specifically, then to which they are?

Mr. Bell: Your Honor, at this time I offer the deposition of F. Murray Haskell, a witness for the defendant taken in Whatcom County Courthouse, Bellingham, Washington. The original of which is on file there. And at this time I am offering——

The Court: Just a moment. Was that taken pursuant to notice or——

Mr. Bell: Yes.

The Court: ——by stipulation?

Mr. Bell: No, it was taken pursuant to notice.

The Court: Then, I think you should also be required to show whether or not, under the Rule, that this man is available or within 100 miles of this trial?

Mr. Bell: That is shown in the——

The Court: Is it shown?

Mr. Butcher: I will stipulate in any event, Your Honor, that he is in Bellingham, Washington.

The Court: Very well.

Mr. Bell: But he does testify that he can't be here [273] at the trial, and he does live there.

The Court: All right. He is over 100 miles away, today. But it is so stipulated. Very well.

Mr. Bell: Then, we offer the one of Douglas Blair, under the same set of circumstances.

Mr. Butcher: I will also stipulate that he is also in Bellingham, Washington, at this time.

The Court: Very well. Then the depositions of

Douglas Blair and F. Murray Haskell are admitted in evidence.

Whatcom County Courthouse, Bellingham, Washington, December 29, 1954.

* * * * *

DOUGLAS BLAIR,

a witness named in the annexed Notice, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

Direct Examination

By Mr. Ehrlichman:

Q. Will you state your name, sir?

A. Douglas Blair.

Q. And what is your home address?

A. 2814 Lyle Street, Bellingham.

Mr. Gemmill: L-y-l-e?

The Witness: Yes.

By Mr. Ehrlichman:

Q. And what is your present occupation?

A. I am an accountant for Campbell Investment Company.

Q. In the city of Bellingham, Washington?

A. Yes.

Q. And you understand that the trial of this action will be in Alaska in the early part of January, do you? A. I hadn't known that.

Q. Would it be possible for you to attend the trial of this action in Anchorage in the month of January?

(Deposition of Douglas Blair.)

A. It would be practically impossible for me to do so.

Q. And what is the reason for that?

A. Because I am the only person employed by Campbell Investment Company. I am maintaining twelve to fourteen different sets of accounts which have to be closed and tax returns prepared immediately after the close of the year.

Q. Now directing your attention to a Gaasland Construction Company job at King Salmon, or Naknek, Alaska, are you familiar generally with that enterprise of the Gaasland Construction Company? A. Yes, I am.

Q. During that job were you employed by the Gaasland Construction Company?

A. Yes, I was. I was assistant secretary and acting as office manager and accountant for Gaasland Company during that period.

Q. In that capacity what did you do with relation to that Naknek job?

A. I saw, to the best of my knowledge, all, substantially all, correspondence relating to the job. I saw all payrolls, subcontract agreements, and processed all the bills. I also actually visited the job site.

Q. As I understand it, Gaasland Construction Company was the prime contractor on that job, is that right?

A. That is correct. It is, however, Gaasland Company, Incorporated.

Q. That is the correct——

(Deposition of Douglas Blair.)

A. (Interposing) That is the correct name.

Q. ——(continuing) chartered name?

A. Yes.

Q. I see. And there were a number of subcontractors, including Haskell, is that right?

A. That is correct.

Q. Now what was the arrangement between Haskell and Gaasland Companies regarding the board and lodging of Haskell's employees at Naknek?

A. The arrangement was that Gaasland Company should operate a camp where room and board would be furnished to their own employees, those of Haskell Plumbing & Heating Company, as well as those of other subcontractors on the job.

Q. Did these various subcontractors, including Haskell, have any direct hand in the management of that boarding and lodging camp?

A. None whatsoever.

Q. Whose employees operated that boarding and lodging camp?

A. The employees of Gaasland Company, Incorporated.

Q. And to whom did the hut belong which burned in October of 1951 in which these plaintiffs were lodged?

A. I wouldn't state to whom it belonged. The camp proper belonged to the C.A.A., was leased by them to the Alaska Salmon Industry, and with the permission of the C.A.A. by the Alaska Salmon Industry to Gaasland, so that Gaasland was not the

(Deposition of Douglas Blair.)

owner of any of the buildings. However, all of the buildings were operated by and under the jurisdiction of Gaasland Company.

Q. Who hired the camp steward?

A. We hired the camp steward, the cooks, the bull cooks, and any other personnel working in the camp.

Q. Who inspected and maintained the Quonset huts in which the subcontractor's employees lived?

A. All of the camp was inspected and maintained by Gaasland Company. I would assume the inspections to be made by the camp manager.

Q. And who was that in October of 1951; do you recall?

A. I believe it to have been Lee Post, who was camp manager there. The previous camp manager was named Joe Nord, but I believe that he was gone and had been replaced by Post at that time.

Q. Now, you used the expression "bull cook." What is a bull cook?

A. The bull cook was an employee who cleaned quarters, made beds, changed linen, and was generally responsible for keeping the camp and quarters in a neat orderly condition.

Q. Who purchased the groceries that were eaten by the plaintiffs and the other subcontractors' employees? A. Gaasland Company.

Q. And who purchased the fuel oil which was burned to keep the Quonset huts warm?

A. Gaasland Company.

(Deposition of Douglas Blair.)

Q. And do you know what kind of fuel was burned in the Quonset hut in question?

A. No, I do not. To the best of my knowledge all of them were heated by stove oil supplied by the Standard Oil Company of California at Naknek. It was barged up river to the job.

Q. Was there a written contract between Haskell and Gaasland providing for the lodging and boarding of these plaintiffs and the other Haskell employees?

A. To the best of my recollection there was no such agreement.

Q. What was the arrangement?

A. As I recall, one of the provisions of the agreement with Haskell Plumbing & Heating Company was that they should be compensated for all of their costs in connection with their subcontract, and that they should receive a certain additional amount over and above the costs. There was, therefore, no object in Gaasland Company's billing subsistence and quarters to Haskell only to have Haskell bill them back to Gaasland Company. That, to the best of my recollection, explains the absence of any agreement as to a specific amount to be charged.

Q. Gaasland just picked up the check as it came along?

A. That is correct.

Q. I see. To your knowledge did the Haskell Company at anytime undertake the inspection and maintenance of the Quonset hut in question prior to the time of the fire?

A. I am sure they did not.

Mr. Ehrlichman: That is all I have.

* * * * *

[Endorsed]: Filed Jan. 3, 1955.

Whatcom County Courthouse, Bellingham, Washington, December 29, 1954.

* * * * *

F. MURRAY HASKELL

a witness named in the annexed Notice, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

Direct Examination

By Mr. Ehrlichman:

Q. What is your name?

A. F. Murray Haskell.

Q. And your home address?

A. 905—wait. 622 Briar Road.

Q. In what city?

A. Bellingham, Washington.

Q. And what is your occupation, sir?

A. Plumber-owner.

Q. You are associated with the Haskell Plumbing & Heating Company, Incorporated?

A. That is correct.

Q. What is your position with that company?

A. At the present time, vice-president.

Q. And what was your position with that company in November of 1951?

A. I was acting secretary then.

Q. And were you active in the management of that company?

(Deposition of F. Murray Haskell.)

Mr. Gemmill: You mean October, '51, the time of the fire?

Mr. Ehrlichman: Yes. Did I say November?

Mr. Gemmill: Yes.

Mr. Ehrlichman: I meant October.

By Mr. Ehrlichman:

Q. You were secretary in October of 1951 too?

A. That's right.

Q. And did you have an active part in the management of that company at that time?

A. Yes, I did.

Q. And for a year prior thereto?

A. That's right.

Q. Do you understand that the trial of this action is to take place in Alaska on January 5th of 1955?

A. Yes.

Q. Is it possible for you to be present at the trial of that action?

A. No.

Q. Why not?

A. Because of other business obligations and negotiations down here.

Q. You will not be in Alaska at that time?

A. No, I will not.

Q. Now, Mr. Haskell, directing your attention to a fire which took place in Naknek, Alaska, on October 11th, 1951, are you familiar with the Quonset hut which was involved in that fire?

A. Yes.

Q. I will ask you whether that Quonset hut was the property of the defendant corporation at the time of the fire?

A. No, it was not.

(Deposition of F. Murray Haskell.)

Q. Do you know to whom that hut belonged?

A. To Gaasland Construction Company.

Q. And had that hut ever belonged to the Haskell Plumbing & Heating Company, Incorporated?

A. No, sir.

Q. Had the Haskell Plumbing & Heating Company, Incorporated, ever undertaken the maintenance of that hut and its equipment?

A. No, sir.

Q. Do you know who was living in that hut at the time of the fire?

A. The plumbers that we had hired for that job.

Q. And what arrangement had been made for their lodging prior to that fire?

A. On the starting of the job we brought the men in from Anchorage. There was no housing facilities available with the exception of a place they called the Sky Motel.

Q. And where was it located?

A. Approximately a mile from the job site.

Q. In Naknek? A. In Naknek.

Q. And who operated that Sky Motel?

A. It was an individual that catered in that type of business.

Q. Was it anyone associated with your company? A. No, sir.

Q. Or the Gaasland Construction Company?

A. No, sir.

Q. It was an independent concessionaire, is that right? A. That's right.

(Deposition of F. Murray Haskell.)

Q. And who paid the bills for the lodging of your men at that Sky Motel?

A. Gaasland Construction Company.

Mr. Gemmill: The which Construction Company?

The Witness: Gaasland.

By Mr. Ehrlichman:

Q. And were the bills from the Sky Motel for that lodging sent to your company or to Gaasland?

A. They were sent to Gaasland Company.

Q. Direct? A. Direct.

Q. When was it that your men ceased to be lodged in the Sky Motel and started living in this Quonset hut?

A. As soon as quarters were made available. To my recollection, I believe they stayed in there approximately, I would say, in the neighborhood of two months.

Q. And who made the Quonset hut available to them?

A. Gaasland Construction Company.

Q. Do you know who operated the eating or messing facilities at which these men ate while they lived in that Quonset hut before the fire?

A. Gaasland Construction Company arranged for all eating and rooming for all subcontractors.

Q. I see. And what was the arrangement for compensation to the Gaasland Construction Company for those facilities?

A. We purchased the facilities by the man-day on the general contractor, which was Gaasland Con-

(Deposition of F. Murray Haskell.)

struction Company, as did all the other subcontractors on the site.

Q. In other words, you say you purchased them by the man-day. Did you pay a unit rate per man for board and room? A. That's right.

Q. And these facilities were then provided by Gaasland, is that right? A. That's right.

Q. And who undertook the maintenance and upkeep of the building in which these men were lodged?

A. Gaasland Construction Company hired all the personnel to take care of it—eating, housing.

Q. And did they also provide the upkeep for the hot water heater and heating facilities in those huts? A. That's right.

Q. Now, I will ask you whether at anytime during the period between the time the men left the Sky Motel and the time of the fire, at anytime during that period, did the Haskell Company provide or maintain housekeeping facilities?

A. No, sir.

Q. For any of these men? A. No, sir.

Q. Did you have any staff which provided lodging or messing facilities for any of your people?

A. No.

Q. Did you have any bull cooks in your employ?

A. No, because the cost would be prohibitive for an individual under a small crew to come in and set up facilities of that nature.

Q. So you retained an independent contractor to do that for you, is that right? A. Yes.

(Deposition of F. Murray Haskell.)

Q. And that contractor was the Gaasland Construction Company, is that correct?

A. That's right.

Mr. Ehrlichman: I think that is all I have.

* * * * *

[Endorsed]: Filed Jan. 3, 1955.

Mr. Bell: Now, Your Honor, with those depositions in—the defendant will rest—and will want to renew each of the motions above made at this time, with as full force and effect as if I stated them all over, and if you will consider them as made in full at this time, I'll not take up your time to restate them, but if you'd rather, I will do so.

The Court: What you mean is you are asking the Court now to consider them in connection with the final decision in the case?

Mr. Bell: Yes——

The Court: Surely we need not go into the matter of arguing them again.

Mr. Bell: Well, may I make the motions then, after we've rested then; then I won't argue the case at [274] all. At this time the defendant moves to strike all of the testimony as to both the oral testimony and the interrogatories that are before the Court. That's number one. We moved also to strike the interrogatories in a separate motion for the reason that they are not admissible in evidence at all. Then, third, I move to dismiss the entire case for the reason there is no cause of action proven. With that then we will argue it at Your Honor's

convenience on those motions after you have had time to read the depositions and——

The Court: Well, the motions are directed against the plaintiffs' case. I see no reason that they can be properly renewed at this time. The whole questions will, of course, be considered at arriving at a final decision. The same questions that you raise, but the motions as such at this time will be denied.

Mr. Butcher: If Your Honor please, now, in connection with the depositions just received, and which I stipulated may be read by Your Honor. I have not read these depositions——

The Court: I was just going to ask about that.

Mr. Butcher: And I am going to ask Mr. Bell if he would lend me the copies that he has——

Mr. Bell: Sure.

Mr. Butcher: And, also, Your Honor, as in most depositions where they are taken outside the court, objections [275] to matters irrelevant, incompetent, immaterial, and other objections are made which are not ruled upon, and the witnesses go ahead and answer anyway, leaving it to the Court. And now, I would also like to state to the Court that if there are such motions, such objections, to the introduction of any question, or the answer to any question, that the Court rule upon himself at the time he reaches it, as to whether it should be received or not.

The Court: Well, there would be no record of that. Supposing we have to take this matter up and continue again in the morning. Supposing that there are any objections made in the depositions

which you wish to urge, supposing you present them tomorrow morning.

Mr. Butcher: That is satisfactory. Is that satisfactory to you? (To Mr. Bell.)

Mr. Bell: And may I do the same, Your Honor. If you please?

The Court: Yes, of course. Both parties.

Then comes the question, Counsel, for the plaintiffs—whether you may wish to offer any rebuttal—in answer to the depositions. I presume you would hardly be in a position to know at this time?

Mr. Butcher: It may be that I would want to talk to you about it, Your Honor.

Mr. Bell: That is all right. He has got a [276] right to. It will be all right with me.

The Court: But you would hardly be in a position to do so now, not having read the depositions?

Mr. Butcher: No, I couldn't do so now.

The Court: Very well. It seems then that is all that we can accomplish this afternoon. The case will be continued tomorrow morning, with the opportunity first to offer rebuttal, if so desired, or any sur-rebuttal which may develop. And then we will take up the arguments of counsel. And as suggested, I would much prefer to have an opportunity to wade through these depositions before hearing the arguments, naturally. And that I promised to do this evening.

Mr. Bell: All right. It is a big job, I know.

(Other business taken up at this point.)

Mr. Butcher: Then after the question is deter-

mined whether there will be rebuttal or not, we will go right ahead with the argument, then?

The Court: Yes. Well, I am thinking of another conflict on our calendar for the moment. We will probably have to take up the matter at ten o'clock. It no doubt wouldn't take over a half hour.

Mr. Butcher: The time for arguing is immaterial to me, Your Honor.

The Court: So, supposing—We ought to be able to resume this case by ten-thirty. So if that will be agreeable we will resume at ten-thirty, and adjourn court until ten tomorrow morning. We will resume this case at ten-thirty. There is nothing further at this time.

Court adjourned at 4:00 p.m.

On Friday, January 7, 1955 at 10:40 the following proceedings were had:

The Court: We will resume the trial in the case of Weeks and others vs. Haskell Plumbing and Heating. First, Counsel, I would like to say that last evening, I carefully read and studied the several depositions which were admitted in evidence late yesterday. That is, the remainder of the deposition of Jesse Hobbs, and all of the depositions of F. Murray Haskell, and Douglas Blair. I note that in the latter two depositions that it was stipulated by counsel taking them that all objections to the materiality or competency of the questions were reserved until the time of trial. But I also find that several objections were made. Therefore, it is necessary at this time that the Court hear any objections which counsel for either party may have to any

questions contained in either of these depositions and try and pass upon them.

Mr. Butcher: If Your Honor please, Mr. Bell was kind enough last night to lend me his carbon copy of [278] the deposition of Douglas Blair and the deposition of F. Murray Haskell. I have read them and I have also noted that occasionally there were objections made, and testimony allowed in spite of the objections and reservations also being made. But I find, Your Honor, that while perhaps, technically, the objections were sound on the part of both parties, they do not involve material evidence on testimony to a point where it would make any difference from my point of view. Therefore, I waive any objection; any testimony that was taken over the objection of Mr. Gemmill; anything that Mr. Gemmill objected to—that was testified to on behalf of either of these persons, either on cross or direct examination.

The Court: Very well. I note the fact that some of these objections made by Mr. Gemmill were moot. For example there appeared a long discussion with regard to one question asked of a witness, and finally the witness answered "I do not know." So, it is futile to pass upon any such objection. Do you have any, Mr. Bell?

Mr. Bell: Your Honor, I am in a position a great deal like Mr. Butcher. I have his copy of the deposition which he was kind enough to let me have, and I was so tired when I left here last night that I didn't read it—or get to read it. There were a lot of people waiting for me in the office, and I

didn't get to read it, but I did [279] work on it this morning, some. But like Mr. Butcher, many of those objections that are shown there, are matters that I would urge before a jury, but since the case is being tried before the Court, most of them are immaterial, because I fully believe that the Court will exclude from his mind any incompetent evidence, anyway. It is just natural for a lawyer to do that. And therefore I am not, at this time, going to urge—or I am not in a position to urge—or push any of those for objections. There is only the one on page 13——

The Court: That is Hobbs' deposition?

Mr. Bell: Mr. Butcher's deposition.

The Court: Well, the deposition of the witness Hobbs.

Mr. Bell: Hobbs, yes.

The Court: Page 13.

Mr. Bell: At the bottom, the answer was this: "Do you know who furnished that?"

With reference to "The bed and the bedding was furnished there, yes." and so on. It goes on and says that everything was furnished.

"Do you know who furnished that?"

"Well, as far as I know, Haskell was supposed to furnish it. He was supposed to furnish free room and board." [280] and then Mr. Ehrlichman objected, and the answer of course to the objection was not ruled on. He objected to the answer then. I take it that the answer means nothing anyway.

The Court: Well, it was not answered, Counsel.

Mr. Bell: Yes, he said it: "Well, as far as I

know, Haskell was supposed to furnish it.”

The Court: Oh, the objection followed the answer rather than the question?

Mr. Bell: Yes, it did. And he objected to the answer as not responsive. And that is the one I call your attention to. There were two or three times, if you remember that same—Well, every time Mr. Butcher asked practically the same question, and practically the same answer was, “They didn’t know who furnished it.” In their opinion or their understanding he was—that Haskell Plumbing and Heating was to furnish it. And it all depends on the construction of the written contract. And I don’t see any reason to argue about it.

The Court: Well, my attention was directed yesterday by Mr. Butcher to the rule on that particular type of objection, which I find to be correct; although in common practice it is violated; and that is that the objection that an answer is not responsive is available only to the party who asks the question. And I find that that is correct. [281]

Mr. Bell: Mr. Butcher showed me that same thing. I——

The Court: At least it is correct, according to the authority which he showed to me.

Mr. Bell: Yes, it is.

The Court: It is a matter which is commonly done. So, therefore, I would say that that objection is not obtainable, and must be overruled. If you wish to object upon other grounds, as to its competency or relevancy—that I think would be still permitted.

Mr. Bell: Well, I would object to it on the theory that it is incompetent, irrelevant, and immaterial, and calls for a conclusion of the witness; the question does, because it drew an answer that is based upon hearsay or conclusion. Even though the question—it might have been worded exactly right—it drew an answer that is not responsive, and is detrimental and prejudicial to the defendant's cause of action.

The Court: The question was, "Do you know..." And the answer was what was supposed to be done. To that extent I believe that the answer is incompetent, and the objection will be sustained upon that ground. Not upon the ground that it is not responsive.

Mr. Butcher: Your Honor, I didn't get a chance to be heard on that—— [282]

The Court: Oh, I am sorry. Did you wish——

Mr. Butcher: If Your Honor will recall, most of the plaintiffs who took the stand, testified that they had seen or heard—or seen, rather—because there were several copies of the contract available down there on the job—what was supposed to be furnished. Now, if——

The Court: Mr. Butcher. We have a written contract here on that. Why is it material as to what was supposed to be done?

Mr. Butcher: All right.

The Court: Is that the only one, Mr. Bell?

Mr. Bell: That is the only one on the objections.

The Court: Well, then we come now to rebuttal. Do you have any rebuttal, Counsel?

Mr. Butcher: I have no rebuttal testimony to offer, Your Honor.

The Court: Before proceeding to the argument in the case, there is something that the Court will require. I assume that the Court has such power—by way of additional evidence before we can determine all of the issues in this case; and that is the question of the element of damage. In examining the deposition of the witness Hobbs, I find that he bases his claim of damage almost exclusively upon replacement value of the articles lost. Similarly, the testimony of the one witness who we heard on this matter, Mr. Callaway, was to the effect that except for three items, I believe, the shoes, a top coat and a clock—that he based his claim upon replacement value. The Court is not at all satisfied that that is the proper measure of damage, and I would like to hear some more evidence on that point—

Mr. Butcher: (Indicated an interruption.)

The Court: Will you permit me to finish, Mr. Butcher. In my own experience, I do know that insurance companies have very definite rules as to such claims, which rule although not conclusive would be certainly persuasive in this court in determining what is the proper measure of damage. That is, I do know as to furniture or equipment—the rule is not replacement value—but replacement value less a reasonable allowance for use and depreciation. Now whether that applies to articles of clothing and personal effects, I do not know. But I should like to hear some evidence on it, and would suggest that the best evidence—although subject to

counsels' objections—the best evidence would be from some insurance adjuster who is skilled in these matters. I would like to ask that such evidence be produced.

Mr. Butcher: Well, then, Your Honor, may I reopen—let me make this suggestion, first before we proceed to argument, unless Mr. Bell objects. Let me reopen [284] the plaintiffs' case sufficient to call an insurance adjuster on that particular phase.

The Court: That's what I should like to do.

Mr. Bell: I would have no objection to that.

The Court: Very well. Do you wish to proceed to argument at this time as to the remainder of the——

Mr. Butcher: Does Your Honor feel that the whole matter should be argued including that item at one time or——

The Court: Well, that would be up to Counsel. We will hear it at this time except counsel might not like to argue the matter piece-meal.

Mr. Butcher: Would you rather argue after hearing the insurance adjuster or would you rather argue it now?

Mr. Bell: It doesn't make a bit of difference. It is your convenience and the Court's convenience. Either way. I'll argue it now or later; whichever either one of you two agree, is all right.

Mr. Butcher: Perhaps, if we could have a two or three minute recess, which will permit me to call one of several adjusters in town—there are several of them—I think they are all quite important

men. I could report back to the Court in about five minutes. I will find out when such a man could be here. [285]

The Court: Very well. We will take a recess then for five minutes.

(Thereupon the court recessed from 10:50 a.m., until 11:00.)

Mr. Butcher: If Your Honor please, I called three insurance adjusters, and two of them their phones didn't answer, sir. I called Mr. Lundquest, an adjuster, and he tells me that he could appear in court at two o'clock, but not before that because he has agreed to go to a fire this morning.

The Court: That would be most convenient to the Court, because we have an ex-parte matter at one-thirty which will probably be through by then, and nothing else until three-thirty. So, except for that time we can devote as much as is necessary to the trial of this case. So that would be fine. Now, then perhaps if you gentlemen are ready, we can proceed to hear the arguments on the case, with the exception of this issue of damage which can be reserved then until a later time.

Mr. Bell: I think that is all right, Your Honor. If you are going to sustain the motion to dismiss, there would be no need for the extra argument; and if you are not, why then that will——

The Court: Well, we have already denied the motion to dismiss. [286]

Mr. Bell: No. I thought you set it for argument this morning.

The Court: The motion to dismiss? No. The ar-

gument on the final—the final argument on the case. The evidence is closed, as I understand it. There is no rebuttal.

Mr. Bell: Well, the depositions were not read by—I——

The Court: Well, I understood it was agreed that the Court could read the depositions last evening, which I assured you I had done, reserving the right to make objections to any of it this morning, which has been done.

Mr. Bell: That's right——

The Court: Well, then all the evidence is in, as I understand it——

Mr. Bell: That's right. All of it is in. Now, I understood that you would hear my motion to dismiss——

The Court: A motion to dismiss would hardly be proper at this time, Counsel. I will hear the final arguments of counsel.

Mr. Bell: Well, if you overruled my motion——

The Court: Well, I overruled it three times, sir.

Mr. Bell: You overruled it at the close of the plaintiff's evidence but——

The Court: You renewed it again yesterday and we overruled it again——

Mr. Bell: And I have to renew it now since the depositions——

The Court: Well, you may do so.

Mr. Bell: All right.

The Court: Then it is overruled for the reasons assigned.

Mr. Bell: Well, let me make the record, then, Your Honor.

The defendant, after all of the evidence is in, with the exception of the testimony of a claim agent, as to determine the values of certain objects, the defendant now, moves to strike all of the testimony which—on the same grounds as that set up in the motion to dismiss—that was filed some time ago. I imagine you will want to rule each one of these separately, do you not?

The Court: This is a motion to dismiss on account of failure of the complaint to state a cause of action?

Mr. Bell: That's right. And a misjoinder of parties.

The Court: ——and a misjoinder of parties. For the reasons previously assigned, such motion will be denied. [288]

Mr. Bell: Now, then I move to strike the interrogatories on the theory that they are not—they were improperly introduced, and were not competent evidence.

The Court: For the reasons previously assigned, such motion will likewise be denied.

Mr. Bell: Now, I move to strike the Plaintiffs' Exhibit number one which is the contract referred to all the way through the case for the reason it is not signed or executed by any party whose name is in the body of the contract in any way, and purports to be a contract between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and the employers of the group named—we do not know at this time—in so far as this

lawsuit is concerned who originally executed this contract, which was dated the 18th day of August 1950. If the contract was ever executed, there is no executed contract before the Court between the parties whose names are mentioned as the makers of the contract, and the Union, itself. And it is only executed so far as the contract itself shows by F. M. Haskell, P-l-u-m-b and H-y-t Incorporated. F. M. Haskell. And I move to strike that because it is not binding on the parties here and is not available to—of any effect to the plaintiffs. [289]

The Court: For the reasons assigned at the time Exhibit One was admitted in evidence, and for the further reason that the execution of the contract is admitted in the depositions of the defendant, the motion to strike is denied.

Mr. Bell: Then I move to dismiss on the ground there is no competent evidence as to any damage suffered as the measure of damages has never been properly met, and there is no competent evidence of the value of the properties lost.

The Court: That must be denied at this time—reserving decision after we have heard the testimony requested by the Court.

Mr. Bell: Now, Your Honor, do you want me then to start the argument—I suppose the plaintiff will start the argument——

The Court: Well, I expect so.

Mr. Bell: —because I have had my argument.

The Court: We will hear from the plaintiffs on final argument of the case. Now, as to the question of time, Counsel, the rule limits us to an hour on

each side. I presume that that would be agreeable and not too harsh in this case.

Mr. Butcher: That will be more than ample, Your Honor. I have a number of books here and I don't [290] intend to read them from cover to cover. If Your Honor please, has ruled on that last motion of Mr. Bell's, but by way of argument I would like to comment that the best person in the world to establish the value of the things he has lost is that person by reporting and testifying how much he paid for them, and the value to him. While third parties may be helpful in establishing values, they can never establish the true value.

* * * * *

The Court: We will continue the case between Weeks and others and Haskell. Now, we interrupted your argument, Mr. Bell, at the noon recess. Do you wish to continue, or do you suggest that you were through?

Mr. Bell: Your Honor, let me see. I thought of something right at the time that I quit—I wanted to call your attention to the fact that Mr. Butcher has referred to.

(Mr. Bell continues with his argument.)

Mr. Butcher: The measure of damages——

The Court: Yes.

Mr. Butcher: Your Honor, the adjuster—for the property lost—and the type—he is here in court and I assured him that we [291] would put him on promptly, so that he could get back to his regular work. I would like, if the Court would be willing, and Mr. Bell consents, to call him now, and then

let me complete my argument on rebuttal after he leaves.

The Court: I was just going to suggest that.

Mr. Bell: I think that is a good idea.

FLOYD A. LUNDQUEST

was called as a witness on behalf of the plaintiffs, was duly sworn and testified as follows:

Direct Examination

By Attorney for Plaintiffs:

Q. Will you state your full name to the Court?

A. Floyd A. Lundquest.

Q. And what is your occupation, Mr. Lundquest?

A. Insurance adjuster—primarily, fire.

Mr. Butcher: Mr. Bell, will you stipulate to Mr. Lundquest's qualifications as an adjuster, and an appraiser of property lost?

Mr. Bell: I will.

Q. Mr. Lundquest. Let me speak to you, and I will put a question to you which will give you an opportunity to say if there is a measure of damages: A group of men were located in a camp at King Salmon. They had equipment with them and clothes—personal effects—such as cameras, guns, wristwatches, electric razors, razor kits, suitcases, duffle bags, seabags, suits, dress suits, dress shirts, hats, belts, buckles, socks, dress shoes, work shoes, boots, galoshes, and similar items of that nature—too numerous to call your attention to. Hundreds of them for nine or ten men. Now, as an insurance adjuster, you are called upon to appraise miscellaneous household items, and miscellaneous items

(Testimony of Floyd A. Lundquest.)

of personal property; some of which was new, and some of which was used. Could you apply a measure of damages—a measure in evaluating that kind of property, without knowing exactly the age and use of each individual item. Is that possible?

A. Yes, it is possible.

Q. And, how would you do it?

A. Well, I would take into account the age of the individual, as for example, here in the Territory, the younger men with their income use it to buy good make cameras and watches and so forth. Whereas the older men don't disburse their funds that way. They are possibly married with a family and they need their funds for other purposes. A group of younger men very likely would have fishing equipment out there in the territory where fishing is plentiful. They would also have hunting equipment. I'd also take into account how long they had been in the Territory, and maybe finding that they had only been here for a few years, I possibly would apply depreciation of [293] about 15 or 20%; but very rarely over 33⅓%. It's very rarely that——

Mr. Butcher: In other words for items of this kind you would apply a measure of about 15% to——

Mr. Lundquest: ——33⅓% in the younger age group. In the older age group, those men very rarely have a suit of clothes; they have what you might call bush garments, and stuff like that for a construction job; but they don't spend their money on \$50 suits or \$80 suits or something like that.

(Testimony of Floyd A. Lundquest.)

They don't even have 'em. And I would take my depreciation then accordingly. And in the younger age group, I think an over-all, if you are going to spread it on an even keel—and be fair about it—would be $33\frac{1}{3}\%$ —would be a fair deduction.

The Court: On which—on the younger?

Mr. Lundquest: On the younger group. The older you get the longer you had certain items. A man say who is 55 on a construction job, he may have had that rifle since he's been on the job, since he was a youngster.

Mr. Butcher: The testimony, Mr. Lundquest, in connection with the majority of the items is that a good many of the items were purchased that spring and summer for the trip; and some of the equipment, razors, and cameras had been purchased a year or two before. But most of it, I believe I am safe in saying, according to [294] the interrogatories and testimony, was in a fairly new condition.

A. Well, then I would deduct 20%, but possibly not over $33\frac{1}{3}\%$.

Q. Somewhere between 20 and $33\frac{1}{3}\%$?

A. That is right.

Q. Depending on the use of it.

A. That is right.

Mr. Butcher: All right, then. That's all.

Mr. Bell: Now, I have some questions.

Cross-Examination

By Attorney for Defense:

Q. Mr. Lundquest, one item in this, the evidence

(Testimony of Floyd A. Lundquest.)

will show, was a suit of clothes—a tailor-made suit—that was ordered and cost the man \$125.00 the year before. Now what would you feel that a suit of clothes of that age—a tailor-made suit—costing \$125.00 for—at the time. What would you consider a suit like that worth in adjustment?

A. I would say 50%, because it stands to reason that if a man has \$125.00 to buy a new suit—he has other suits hanging up in the wardrobe—one or more. And the very moment you bought a garment—it depreciates if you wear it down the street, once.

Q. And what about a top-coat—a tailor-made top-coat—that he ordered and paid \$85.00 for the year before?

A. Well, a top-coat is good for three years.

Q. And what would you consider the value of this tailor-made top-coat that cost him \$85.00?

A. I'd deduct a third.

Q. A third. Now, would that system follow through on shirts that cost thirty some odd dollars a piece—fancy shirts that cost, I believe the evidence shows, \$37.00 a piece. There were three of them for one man?

A. Well, those shirts are usually gabardine and they are usually tailor-made; taking the price of \$75.00 and due to that quality they most generally have to be dry-cleaned, and they are good for at least two years, without too much fading. After that you get quite a bit of fading in them.

Q. What would you normally feel right in de-

(Testimony of Floyd A. Lundquest.)

ductions on those shirts of that kind that were, say a year old?

A. Well, I'd want to take about 40% on a deal like that.

Q. Would you use that ordinary method in calculating losses, and do you use that ordinarily in calculating losses in this vicinity?

A. Yes, I do.

Mr. Bell: That is all.

Mr. Butcher: There is one further question on my part.

Redirect Examination

By Attorney for Plaintiffs:

Q. Mr. Lundquest, with reference to the \$125.00 suit. If this man spent most of the time in camp—in the bush [296] where he had no opportunity to wear it; he ordered it there from a salesman that came to the camp. He had only worn it a few times when he happened to go in town. Would that make any difference?

A. It would make some difference, but only to the point of taking his particular circumstances into account. In other words, I might deduct say a straight 50% depreciation, or a 40% depreciation. But that wouldn't really make him hold—with sufficient money to go out and even buy a ready-made suit of the same quality that he had when he paid \$125.00 for a tailor-made. I would try to give him enough cash and satisfaction so that he could go out and buy a ready-made suit. He would certainly be entitled to that.

(Testimony of Floyd A. Lundquest.)

Q. Then if he just purchased a suit, would you give the full value?

A. I would in that case.

Q. Then, if you took all these items that I mentioned and apply that measure—which I believe was between 20 and 33 $\frac{1}{3}$ %. You feel that would be fair?

A. I do.

The Court: Mr. Lundquest, Mr. Bell asked you a question which was almost what I had in mind, but not quite. He asked if this was the ordinary method which you used in calculating fire losses. Now, could you tell us whether or not, to your knowledge, that is also the ordinary method that [297] is generally used. In calculating fire losses?

A. Well, yes. I have been in the business twenty-five years this coming August first; and I went through the Industrial School in Chicago, and I also go by the National Bureau of Standards when it comes to quality of materials. Not all materials will take dry cleaning or laundry as other materials; so, I go by the Bureau of Standards. With household effects, I take into account locality. If you have got a lot of moths around, it stands to reason if you have a mohair davenport and a fellow says he has owned it fifteen years, and the mohair—and the moth processing is only guaranteed for five—it stands to reason that when that mohair davenport had a loss on it at the age of fifteen, it wasn't in too top condition. So——

The Court: Do you count this as well as the loss according to insurance practice based upon

(Testimony of Floyd A. Lundquest.)

replacement cost less reasonable use or depreciation—or on original cost?

A. Replacement cost.

Q. Replacement cost?

A. Because you can't take advantage of the market just because you happen to know somebody that you can buy—well go down the street and buy a suit of clothes that is on sale for \$39.50—that normally sells for \$79.50. Well, I have no right after you have a fire a week later to tell you that that suit was only worth \$39.50, because now the sale is over and it is going to [298] cost you \$79.50 to replace it. So I go by on replacement.

The Court: That is the general practice, is it not?

A. Yes, it is.

Q. Thank you.

The Court: Any further questions?

Mr. Bell: No, none.

The Court: Well, thank you.

Mr. Butcher: Thank you, Mr. Lundquest.

(Mr. Lundquest was excused and left the courtroom.)

The Court: We will hear from counsel for the plaintiffs in rebuttal argument. We are still supposed to be allowed an opportunity for any comments which you wish to make upon this additional testimony regarding the measure of damages and the loss ratio. Do you wish any comments on that testimony, by either party?

(Mr. Butcher then addressed the Court.)

The Court: Very well.

I feel that the Court is as well informed now to announce a decision on this case as I would be if I had reserved decision. I did have an opportunity to go into the authorities cited by counsel during the noon recess, together with some which my own research had developed, except for the two cases which were still here on the desk [299] which, of course, I did not find in the library—and did find one additional case in support of counsel's contention with regard to the principle of liability not being delegated, although it doesn't directly involve an employer liability, and that is the case of *Malone v. Jones*, 139 Pacific, 387. Now, touching first upon the contract. There is no question in the opinion of the Court but that the defendant Haskell Plumbing and Heating Company is bound by its employer contract with the Union representing these plaintiffs to furnish them with suitable living quarters. There is a definite contractual obligation. Now it is argued that is as far as they need go—to furnish them a place to live; they don't have to furnish a safe place to live. I cannot agree with that contention. The rule is pretty well stated in 35 *American Jurisprudence*, page 570, that the employer does not fully and finally discharge himself from liability to employees by furnishing suitable tools, machinery, and appliances; and I think possibly a stove may be considered an appliance. He is bound to see that his instrumentalities are maintained in a safe condition. He must exercise reasonable and proper watchfulness as to their condition, and guard against dangers which are likely to arise

from their use. Now, that is clearly a good statement of law. Truly, the employer is not an insurer, but he does have an obligation [300] to furnish not just quarters but safe quarters, and an obligation to see that any appliances, such as heating stoves in those quarters, are properly maintained and used.

Now, as to the fire! We have evidence that an improper use of fuel was used by the bull cook—and I'll come in a minute to the question of by whom he was employed. Well, it was discovered by one of these men that five gallons of gas were being mixed with 50 gallons of diesel oil. We have the positive evidence of an expert chemist along such lines that such practice is dangerous—is obviously dangerous; and it could cause an explosion. We have even evidence to the effect from Mr. Krupa that the flash point of such fuel is lowered from 140 degrees to 90 degrees by adding only 2% of gasoline. The amount that is added here was considerably more than that. We also have evidence that anything under 100% is dangerous; its unsafe; therefore, it could cause an explosion. We have evidence of a severe, intense fire, almost immediately consuming this large Quonset hut, to such extent that none of the men who were working on the job not more than a mile-and-a-half away could reach it in time to get into the building. We have evidence of the force of an explosion, or fire, at least, bursting out of both ends of the building. Obviously an explosion would cause that type of fire. We have evidence from two of these men that following the fire they found [301] one of these stoves with a

drum—which is inside of the stove—split apart. And from one of the men that it was lying some little distance from the base upon which it had sat. All of this taken together—from all of this, the conclusion is inescapable that the fire was caused by an explosion and that the explosion was in turn caused by the negligence of this bull cook. We also have evidence that this practice was reported to the superintendent of the Haskell Plumbing and Heating Company; whether he did anything about it or not does not appear except that obviously nothing was done or else the explosion would not have happened. Therefore there is evidence of negligence causing the damage to these plaintiffs in the loss of their personal effects and clothing.

Then we come to the question of who is responsible for that damage. Other things being equal there would be no argument, of course, but what the employer who agreed to furnish the quarters would be so liable. The defendant claims in his deposition that it is not liable because it, the corporation employed—not employed but made an arrangement with the general contractors—the Gaasland Company—to take care of all of this board and room which they were obligated to furnish. It seems that they had a cost-plus contract, and that all of their costs were to be paid by Gaasland, and therefore Gaasland, who was maintaining [302] a camp, agreed to provide these accommodations. Now, it is argued that that entirely relieves the employer from this responsibility—but I fully concur with the position taken by counsel for the plaintiffs that under the law such responsi-

bility cannot be so delegated; that this is the type of liability which an employer or anyone else cannot relieve himself by simply passing it on to someone else. And the fact, if you please, that the superintendent of Haskell Plumbing Company, Mr. Ferer,—if it be true that he did report it to Gaasland, it makes the situation worse and not better, because again they are trying to escape responsibility, and to use the common phrase “pass the buck,” but that is not permissible under the law. I agree with counsel that no suit could be maintained against Gaasland Construction Company for these damages. The doctrine that such responsibility cannot be so delegated is set forth in a great many authorities, most of which have been cited by counsel, together with the case which I mentioned. The liability springs from the wrong, and that is the fundamental question here. The wrong in this case may not be one of commission—it may be said that Haskell Company and its employees did not put this gas in the oil—but it is one of omission. It was the duty of the Haskell Company to see that these premises were safe, and when informed of a dangerous situation to see that that situation [303] was immediately corrected, which obviously was not done. Therefore, I find that the defendant is liable for this damage. Whether they may have recourse against the Gaasland Construction Company is not for me to determine, but possibly they have.

We then come to the question of the measure of damage. As suggested previously, I do not think it would be consistent with general practice, or law, to

allow in such a case the full amount of the replacement cost of these items. Naturally, and equitably, some allowance should be made for use and depreciation. Taking the testimony of Mr. Lundquest as to the ordinary method used in calculating insurance losses, which I believe to be as suggested, authoritative, if not controlling, it appears that there should be deducted somewhere between 20% and 33% or some cases as high as 40 or 50% allowance for depreciation. Now it would be a gigantic task for the Court to go through each item here of the nine plaintiffs—several hundred of such items—and try and determine in each specific item just how much depreciation should be allowed. I do not think that there is any such duty imposed upon the Court, and about the best that we can do is arrive at some fair average. Now this may hurt some who have a suit that was only a year old or maybe just purchased as against others who had fishing tackle that they had for three years, but [304] it is about the best that we could do in such situation and I think would be fair and equitable. And taking that—or taking the use testified to by Mr. Lundquest, and considering the age of the majority of this group, and considering that some of them took new things, and considering that most of them took practically all their things, I would say that an allowance of—well, I am rather undecided between 25 and 30%. 30% would more near approximate the figures given by Mr. Lundquest, particularly in that some may be 40%—and some 50—and some 15—and some 20. I believe that that is the best that

the Court could arrive at as a fair average—would be 30%—to be deducted for use and depreciation, as an average.

Therefore, it is my opinion that the plaintiffs are entitled to judgment against the defendant for the amounts prayed for in each case, as to which there is no substantial dispute, less an average allowance of 30% for depreciation and use, and together with their costs, and together with an attorney's fee to be computed in accordance with Rule 45.

Findings of fact, conclusions of law, and judgment may be entered accordingly.

[Endorsed]: Filed April 4, 1955.

PLAINTIFFS' EXHIBIT No. 1

PIPE TRADES AGREEMENT

Between the Plumbing-Heating and Piping Employers of Anchorage, Alaska, and Local No. 367 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada.

This Agreement, entered into this 18th day of August, 1950, by and between the Plumbing-Heating and Piping Employers of Anchorage, Alaska, signatory hereto, hereinafter referred to as the Employers, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry, Local No. 367, of the United States and Canada, in behalf of its members, hereinafter re-

Plaintiffs' Exhibit No. 1—(Continued)

ferred to as the Union or Local No. 367, Witnesseth:

Whereas, it is the desire of the Union and the Employers to establish minimum rates of pay, uniform hours of employment, and working conditions on an area basis for the members of the Union employed by the Employers, and

Whereas, it is the desire of the parties hereto to provide, establish, and put into practice effective methods for the settlement of misunderstandings, disputes, or grievances between the parties hereto, to the end that the Employers are assured continuity of operation and the members of the Union are assured continuity of employment, and industrial peace is maintained and the business of the industry efficiently increased.

Now, Therefore, in consideration of the premises and of the respective covenants and agreements of the parties hereto, each of which shall be independent, It Is Hereby Agreed:

I. Work Covered

(A) That this Agreement shall apply to and cover all Members of the Union employed to perform or performing all plumbing, heating, and piping work, as defined in the schedules attached hereto.

(B) That the jurisdiction of Local No. 367 shall cover the mainland of Alaska, from the 64th latitude north to the 58th latitude south. From the 142nd longitude east to the 168th longitude west or all that territory from Anchorage to a point half

Plaintiffs' Exhibit No. 1—(Continued)

way in any direction to the nearest U. A. Local Union.

(C) That all work performed by the Employers, and all services rendered for the Employers, as herein defined, by the members of the Union, shall be rendered in accordance with each and all of the terms and provisions hereof.

(D) That if the Employers, parties hereto, shall sub-contract work as defined herein, provision shall be made in each sub-contract for the observance of said sub-contractor of the terms of this Agreement. A sub-contractor is defined as any person, firm or corporation who agrees under contract with the prime Contractor or his sub-contractor to perform any part or portion of the work covered by the contract, including the operation of equipment, performance of labor, and the furnishing and installation of materials.

(E) That so far as it is within the control of the Employer or his sub-contractors all materials, supplies and equipment used on the job shall be transported to or from the site of the work by members of the appropriate Craft Union. Nothing herein contained shall be construed to prohibit the normal delivery of freight by railroad.

(F) That, if the Employers, parties hereto, should contract work outside of the area covered by the terms of this Agreement, they may employ members of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting

Plaintiffs' Exhibit No. 1—(Continued)

Industry under the terms and conditions of the Local Union in whose territory the work is located.

II. Union Recognition

(A) That the Employers hereby recognize the Union which is signatory hereto as the sole and exclusive collective bargaining representative of those journeymen and apprentices employed by the Employers signatory hereto over whom the Union has jurisdiction, as such jurisdiction is defined by the Constitution of the United Association of Journeymen and Apprentices of the Plumbing and Pipe-Fitting Industry of the United States and Canada.

(B) That during the term of this Agreement, and during the performance by the Employers of any work or contract to which this Agreement relates, all employees covered hereby shall be or shall become members within 30 days after date of employment and shall remain members in good standing of the Union on whose behalf this Agreement is executed, as a condition of their employment.

(C) That in the employment of journeymen for all work covered in this Agreement, the following provisions subject to the conditions of Section II, A, above shall govern.

1. That the Employers shall call upon the Union or their Representative for such men as they may from time to time need, and the Union or their Representative shall furnish to the Employers the required number of qualified, competent and skilled mechanics of the classifications needed by the Em-

Plaintiffs' Exhibit No. 1—(Continued)

ployers. Reasonable advance notice (but not less than twenty-four (24) hours) will be given by the Employers to the Union or their Representative upon ordering such mechanics, and in the event that forty-eight (48) hours after such notice the Union or their Representative shall not furnish such workmen, the Employers may employ men procured from the United Association.

1-b. Should the Employers request the Union to procure members of other Local Unions at any particular time or for any particular job, the Union will make every effort to do so; and the Employers agree to provide ninety (90) days' employment for such Members and to pay their return transportation fare to their point of hire. However, should, through no fault of the Employers or due to circumstances beyond their control, ninety (90) days of employment not be provided to such Members; the transportation fare of such requested Members shall be paid both ways by the Employers.

2. That the Employers may select one journeyman member of the Union in each classification, and such member may be sent to install work in the jurisdiction of a sister local union, and he shall be free to work with the tools if he so desires.

3. That the Union is only obligated to furnish men upon the work within the Schedule as signed by the Employers.

(D) That whenever reference is made in this Section II to the Representatives of the Union, such

Plaintiffs' Exhibit No. 1—(Continued)

reference is intended to designate the Representative of Local No. 367.

III. Strikes, Lockouts, Jurisdictional Disputes

(A) That all jurisdictional disputes between the Union and any other Union affiliated with the American Federation of Labor shall be determined in the manner and by the procedure established by the Building and Construction Trades Department of the American Federation of Labor, and Constitution and By-Laws of the U. A.

(B) That if a signatory Employer is performing work on a job as a sub-contractor, during the construction of which, such job is declared to be unfair by a Building and Construction Trades Council, and the work thereon is stopped for that reason, neither the Councils nor the signatory Union shall be deemed to have violated this Agreement, if, during the period of said stoppage of work, the members of such Union fail to perform their work on said job for the Contractors.

(C) That, the Union shall refrain from any strikes or slowdown due to jurisdictional or any other disputes, nor shall the Employer take any action to lock out the Members of the Union during the term of this Agreement.

(D) Nothing contained in this Agreement or in any part thereof or in this Section III or any part thereof shall affect or apply to the Union signatory hereto or on whose behalf this Agreement is executed, or any of them, in any action they may take

Plaintiffs' Exhibit No. 1—(Continued)
against any Employer who has failed, neglected or refused to comply with or execute any settlement or decision reached through arbitration under the terms of Section V hereof.

IV. Classifications

(A) That all apprentices shall be employed in accordance with the apprentice standards as adopted by the Union under Federal Apprentice Training Program as drawn up and signed by the Joint Apprenticeship Committee and the U. A.

V. Procedure for Settlement of Grievances and Disputes

(A) A craft steward shall be a journeyman member of Local No. 367 appointed by the Union, who shall in addition to his work as a journeyman be permitted to perform during working hours such of his union duties as cannot be performed at other times. The Union agrees that such duties shall be performed as expeditiously as possible and the Employers agree to allow craft stewards a reasonable amount of time for the performance of such duties. The Board of Arbitration shall have the authority to determine what constitutes a reasonable amount of time for the shop steward to perform his duties. The Union shall notify the Employer of the appointment of each craft steward and the Employer, before laying off or discharging a craft steward, shall notify the Union of his intention to do so. It is recognized by the Employers that it is desirable

Plaintiffs' Exhibit No. 1—(Continued)

that the person appointed craft steward remain on the job as long as there is work in his particular craft or trade. In no event shall an Employer discriminate against a craft steward or lay him off, or discharge him on account of any action taken by him in the proper performance of his Union duties.

(B) That the craft steward is to receive grievances or disputes from members of his Craft and report them to his business representative or special representative who shall then attempt to adjust said grievances or disputes with the Employer or his representative performing the work. At the same time, said business or special representative shall notify the Plumbing, Heating and Piping Employers of said grievance or dispute.

In the event that such a dispute cannot be adjusted in this manner within a reasonable length of time after complaint has been submitted, same shall be referred to the Arbitration Board hereinafter provided for. This Board shall convene not later than two days after the dispute has been referred to said Arbitration Board. The final decision must be rendered within three (3) days, after the complaint is submitted to arbitration, unless an extension of time is mutually agreed to by the parties hereto.

It is specifically agreed that the terms and conditions of this Agreement shall be binding upon such board of Arbitration and that it shall have no authority to alter, amend or revise the wages, hours and other conditions set forth herein, it being the in-

Plaintiffs' Exhibit No. 1—(Continued)

tent that such Board's authority and decision shall be within the scope and limited to the application of terms and conditions hereof. The parties hereto agree that a decision rendered by a majority of the Arbitration Board shall be final and binding upon them, provided such decision is made within the time prescribed herein.

(C) All disputes between the parties regarding the interpretation or performance of any of the terms or conditions of this Agreement shall be submitted to arbitration in the manner provided in this Section.

(D) In the case of negligence on the part of members of Local No. 367 which leads to the loss of the Employer's tools the Board of Arbitration shall have the power to assess such member a fair cost.

VI. Joint Conference and Arbitration Board

(A) Within thirty (30) days after the execution of this Agreement, the signatory Employers shall appoint their representatives, and the Union shall appoint an equal number of representatives as members of a Joint Conference and Arbitration Board. Their meeting dates shall be mutually agreed upon by themselves. This Board shall meet four (4) times each year to review the operation of this Agreement, labor supply, and general technical and economic conditions of the Plumbing-Heating and Piping Industry, and make recommendations to the parties which will be beneficial to the Industry and the general public.

Plaintiffs' Exhibit No. 1—(Continued)

VII. Fabrication

(A) All work performed in the production or fabrication of Plumbing or Piping materials shall be subject to the terms and conditions of this Agreement.

(B) The Employers agree to employ journeymen members of the signatory Union in the fabrication of all plumbing and piping materials.

VIII. Shift Work

That on Projects, where the nature of the work requires the working of Members of the Union on a shift basis, the arrangements shall be determined by the Joint Conference and Arbitration Board, provided that no shift work shall be started unless there are at least five (5) days' work for each shift, eight (8) consecutive hours, exclusive of lunch period, between 8:00 a.m. and 5:00 p.m., shall constitute the first shift worked, the second or swing shift shall be paid at the rate of eight (8) hours pay for seven (7) hours worked, the third or graveyard shift shall be paid at the rate of eight (8) hours pay for seven hours worked.

IX. Term Termination and Renewal

(A) That the term of this Agreement shall commence on the 18th day of August, 1950, and continue until the 1st day of March, 1952, and for additional periods of one year thereafter with the proviso that should either party desire to modify any portion or any of the terms hereof, it shall notify the other

Plaintiffs' Exhibit No. 1—(Continued)

party in writing not less than sixty (60) days prior to the expiration date of this Agreement.

(B) That if the parties hereto fail to agree within sixty (60) days after the beginning of negotiations upon any portion of this Agreement it may be cancelled by either party signatory hereto.

X. Working Conditions

1. (a) Eight (8) consecutive hours, exclusive of lunch period, between 8:00 a.m. and 5:00 p.m. shall constitute a day's work. A work week shall consist of five (5) days, Monday, Tuesday, Wednesday, Thursday, Friday. The first eight consecutive hours on Saturday, exclusive of lunch period, between the hours of 8:00 a.m. and 5:00 p.m. shall be paid for at the overtime rate of one and one-half times the regular straight time rate.

(b) Between May 1, and November 15, of each year; the first hour of overtime after the regular work day shall be paid for at the overtime rate of one and one-half times the regular straight time rate.

(c) Between May 1, and November 15, of each year; the first two hours of overtime after the regular work day shall be paid for at the rate of one and one-half times the straight time rate on isolated jobs where subsistence is required.

(d) All other overtime shall be paid for at the overtime rate of two (2) times the regular straight time rate, except as provided in Paragraph VIII.

2. (a) Any member of Local No. 367 working outside the incorporated city limits of Anchorage

Plaintiffs' Exhibit No. 1—(Continued)

shall receive a transportation allowance of \$3.50 per day, except where the work day starts and ends at the camp, shop or Anchorage city limits within the regular eight hour day.

(b) When transportation is furnished by Employer it shall be safe and lawful; the men seated in reasonable comfort and protected from the elements.

3. Adequate shelter shall be provided for the men by the Employers in which to dry their clothes and eat their lunches.

4. The holidays recognized by the Building Trades Council shall be observed under this contract. These consist of New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Alaska Day, Armistice Day, General Election Day, Thanksgiving Day and Christmas. If any of the above holidays shall fall on Sunday, the Monday following shall be considered a legal holiday. Work on such days shall be paid for at the rate of double the regular straight time rate. No work shall be performed on Labor Day except in a case of extreme emergency when life or property is in imminent danger.

5. When shop employs from four (4) to ten (10) men on construction work, one shall be designated foreman by the Employers and he shall receive not less than 35c per hour in addition to the journeyman wage rate. When more than ten (10) men are employed, sufficient foremen shall be employed to maintain that ratio. Where a general foreman is

Plaintiffs' Exhibit No. 1—(Continued)

employed he shall receive not less than 70c per hour in addition to the journeyman wage rate. All plumbing, heating and piping foremen, general foremen and superintendents when employed shall be members of the United Association. All supervisory employees shall be members of Local No. 367.

6. (a) Members sent out of town by the Employers shall be furnished first class board, room and transportation and straight time wages, eight (8) hours per day for the first five (5) days of each seven (7) days spent in travel status, from date of hire including date of return to point of hire.

7. Any workman, after being hired and reporting for work at the regular starting time and for whom no work is provided, shall receive pay for two (2) hours at the prevailing rate of wage, unless he has been notified before leaving his home not to report and any workman who reports to work and for whom work is provided shall receive not less than four (4) hours pay, and if more than four hours are worked in any one day, shall receive not less than full day's work pay. However, the exception shall be when weather or strike conditions make it impossible to put such an employee to work, or where stoppage of work is occasioned thereby or when a workman leaves his work of his own accord.

8. Pay day shall be Friday each week, with not more than one day's pay being withheld, except that if because of the size of the job and payroll more time is needed, the time shall be extended to not more than three (3) days upon request to the Union.

Plaintiffs' Exhibit No. 1—(Continued)

Workmen are to be paid during the regular shift, whether working in a shop, Employer's yard, or in the field. When men are laid off or discharged, they must be paid wages due them immediately at the time of layoff or discharge.

9. No member shall deposit any money to guarantee the safety of any tool kit or materials, nor shall any money be deducted from his pay for same. Members required to work in any area where they are exposed to acids and caustics or other hazardous conditions shall be provided protective clothing, by the Employer, this includes welding gear.

10. Each Employer shall carry Workmen's Compensation and liability insurance, in accord with the laws of the Territory of Alaska and shall furnish proof of this to the Union. Each Employer shall comply with the Safety Code of the Territory of Alaska.

11. Where members are required to take a test for certification, such member shall be paid for his time at regular rate and shall be paid for preliminary sign-up time.

12. The Business Representative shall have access to all jobs and shops at all times during working hours.

13. Any Employer knowingly instructing a member of this Local to install work contrary to the Ordinance may be cited before the Conference Board as a violator of these Working Rules. Apprentices shall work with a journeyman at all times.

Plaintiffs' Exhibit No. 1—(Continued)

14. Any member instructed by an Employer to install work contrary to the Ordinance must warn Employer that work as laid out would be contrary to the Ordinance, then if Employer insists, the member is to proceed with work and notify the Business Representative as soon as possible.

15. No Employer shall dismiss any member or apprentice for making a complaint or giving evidence with respect to any alleged violation of any provision of these working conditions.

XI. Sanitary and Craftsmanship Committee

(A) A committee appointed by the Executive Board to investigate all work reported as having been installed contrary to the City Ordinance or that may be installed in an unworkmanlike manner and may cause the property owner trouble at some future time. Said committee will report back to the Executive Board with a recommendation as to the disposal of each case.

XII. Refusal to Handle

(A) Local No. 367 reserves the right to refuse to handle or install material coming from persons for firms who are considered unfair by Organized Labor and refusal to do so will not be a violation of these working rules provided that in no case will we refuse to handle or install materials Employers have on hand or in transit from port of export when notice is given.

Plaintiffs' Exhibit No. 1—(Continued)

XIII. Work Schedules and Wage Rates

(A) That the following work schedules and jurisdiction of work shall be determined in accordance with Sections 143-147 and as otherwise set forth in the United Association of Journeymen Plumbers and Steam Fitters Constitution and By-Laws as amended September 9, to 13, 1946.

(B) Schedule A—Plumbing

Schedule B—Heating-Piping and Air Conditioning.

Schedule C—Industrial Pipe Work.

Work performed in the construction, erection, repair, remodeling, maintenance, fabrication, dismantling and demolition of Industrial Pipe Work, within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

Schedule D—Utilities and Pipelines.

Work performed in the construction, fabrication, installation, reconditioning, maintenance or repair of all sewer, water and gas utilities and pipeline work within the jurisdiction of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

(C) That the following hourly wage rates shall apply to work performed by the members of the

Plaintiffs' Exhibit No. 1—(Continued)

Union on all work covered by the terms of this Agreement in the jurisdiction of Local No. 367:

General Foreman and Superintendents: 70c per hour in addition to Journeyman's rate.

Foreman: 35c per hour in addition to Journeyman's rate.

Journeyman: \$3.50 per hour.

Apprentice starting rate shall be 50% of Journeyman rate with an increase of 5% each six months period.

(D) When starting operations in a territory other than that in which the Employer's shop is located, he will report to the Local Union having jurisdiction prior to starting such work for notification and will employ workmen required in addition to his regular workmen from the Local Union having jurisdiction in that territory.

XIV.

In the event that any of the provisions of this Agreement shall be declared by a court of competent jurisdiction to be invalid for any cause, such invalid provisions shall be deemed to be non-existent and the remainder of this Agreement shall continue in full force and effect. The parties hereto agree that on some mutually agreeable date they will commence negotiations as to such invalidated and other affected portions of the contract.

In Witness Whereof, the parties hereto have

Plaintiffs' Exhibit No. 1—(Continued)

hereunto set their hands and seals, the day and year first above written.

For the Employer:

/s/ F. M. HASKELL PLUMBING AND
HEATING CO., INC.

/s/ F. M. HASKELL,
1509 Cornwall Ave., Bellingham, Wash.

For the Union:

/s/ SAM ODLE

PLAINTIFFS' EXHIBIT No. 2

Plumbers & Steamfitters Local 367

Date: July 15, 1951

Name: Mike Cullinane. To Haskell Plb. Co., King
Salmon. Minimum Wage: \$3.50. Craft: Fitter. Job
Steward: Butler Fast. Dispatcher: Sam Odle.

Plumbers & Steamfitters Local 367

Date: Oct. 1, 1951

Name: Roy Callaway. To: Haskell Plbg. & Htg.
Co. Minimum Wage: \$3.50. Craft: Plumber. Job
Steward: Mike Cullinane. Dispatcher: Johnny
Bennett.

Plumbers & Steamfitters Local 367

Date: Sept. 6, 1951

Name: Tom Judson. To: Haskell Plbg. Co., King Salmon. Minimum Wage: \$3.50. Craft: Stm. Fitter. Job Steward: Mike Cullinane. Dispatcher: Johnny Bennett.

Plumbers & Steamfitters Local 367

Date: Aug. 6, 1951

Name: B. F. Holbrook. To: Haskell Plbg. Co., King Salmon. Minimum Wage: \$3.50. Craft: Fitter. Job Steward: Butler Fast. Dispatcher: Sam Odle.

Plumbers & Steamfitters Local 367

Date: Sept. 6, 1951

Name: Ole Franz. To: Haskell Plbg. Co., King Salmon. Minimum Wage: \$3.50. Craft: Stm. Fitter. Job Steward: Mike Cullinane. Dispatcher: Johnny Bennett.

Plumbers & Steamfitters Local 367

Date: June 19, 1951

Name: Jim Weeks. To: Haskell Plbg. Co., King Salmon. Minimum Wage: \$3.50. Craft: Welder. Job Steward: Butler Fast. Dispatcher: Sam Odle.

Plumbers & Steamfitters Local 367

Date: Oct. 3, 1951

Name: Jesse Hobbs. To: Haskell Plbg., King Salmon. Minimum Wage: \$3.50. Craft: Steamfitter. Job Steward: Mike Cullinane. Dispatcher: Sam Odle.

[Endorsed]: No. 14724. United States Court of Appeals for the Ninth Circuit. Haskell Plumbing and Heating Company, a corporation, Appellant, vs. Jimmy Weeks, Tommy Judson, Mike Cullinane, Ole Franz, Roy Callaway, Tom Mulcahy, Ben Holbrook, Jesse Hobbs and W. Van Smith, Appellees. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: April 13, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14724

HASKELL PLUMBING AND HEATING COM-	
PANY, INC., Etc.,	Appellant,
vs.	
JIMMY WEEKS, et al.,	Appellees.

STATEMENT OF POINTS RELIED UPON
FOR APPEAL

1. The Court erred in holding that the Answers to the Interrogatories submitted for discovery by the Defendant in this case and the answers given by the various Plaintiffs was competent evidence, and in allowing the same to be introduced in lieu of any evidence as to the number and kind of articles destroyed and the value thereof, in lieu of direct evidence of the witnesses, even though they were produced in open Court, and the Defendant was denied the right to cross-examine the witnesses on the theory that the answers given to the discovery interrogatories were final and the Judgment herein was based thereon.

2. There was not a word of evidence produced at the trial as to the amount and kind of property lost or the value thereof or the damages suffered by the following named persons: Jimmy Weeks, Mike Cullinane, Ole Franz, Tommy Judson, Tom Mulcahy, and Ben Holbrook, and the Judgment as rendered was based solely upon the answers to the discovery interrogatories served by the Defendant

and answered by the various Plaintiffs and filed in the case; this part of the record being introduced over the objection of the Defendant, which the Defendant contends was never admissible as evidence, and the Motion for Judgment of Dismissal at the close of the Plaintiffs' evidence and at the close of all of the evidence, as to each of the last above named Plaintiffs, should have been sustained, there being no evidence of loss of property or the value thereof or the damages suffered, if any.

3. That the only testimony given in the trial of the case from the witness stand as to loss of property and the value thereof, was that of Roy Callaway, who was the first Plaintiff called as a witness, and by the deposition in support of the claim of Jesse Hobbs. A different rule of law applied as to the error committed by the Court in overruling the Motions to Dismiss as to these two particular Plaintiffs, due to the fact that there was evidence introduced as to the loss of articles and as to the value thereof by these two Plaintiffs, and our contention as to the error committed as to these two Plaintiffs is:

(a) That the Judgment was based upon an erroneous conclusion as to the proof of value and based upon the wrong measure of damages;

(b) That no cause of action in favor of these two particular Plaintiffs, or any of the Plaintiffs, was actually proven;

4. Defendant contends that the undisputed evidence shows that Haskell Plumbing and Heating Company, Defendant, did not furnish the food or

lodging to any of the Plaintiffs; that that was furnished by the general contractor, Gaasland Company, Inc., as is shown by the depositions of F. Murray Haskell and Douglas Blair, which stand undenied by any one.

5. The Court erred in rendering judgment for the Plaintiffs, and each of them separately, as there was no evidence of any negligence on the part of the Defendant, or its agents, servants, or employees, and all negligence, if any there was, was the negligence of an employee of the general contractor, Gaasland Company, Inc. This was established only by the testimony of one of the Plaintiffs to the effect that he saw the bull cook mixing gasoline with diesel oil in the filling of the barrels which were connected with the space heaters by copper tubing, and if this was negligence, then it was the negligence of the general contractor who furnished the board and lodging for the Plaintiffs, and not the negligence of the Defendant, Haskell Plumbing and Heating Company.

6. The Plaintiffs assumed the risk by continuing on after they all knew and appreciated the danger caused by adding gasoline to the fuel used to warm the quonset hut.

7. The Court erred in admitting in evidence the contract designated as "Plaintiffs' Exhibit No. 1", since the contract showed clearly to have been a contract entered into between the Union and the general contractors doing work in Alaska, and the only place that the Haskell Plumbing & Heating Company's name appears on that document is at the bottom thereof. It is signed by "F. M. Haskell

Plumbing & Heating Company by F. M. Haskell", but neither F. M. Haskell Plumbing & Heating Company, F. M. Haskell personally, or the Haskell Plumbing & Heating Company, a corporation, are mentioned anywhere in the body of the contract, and the writing of a name not involved in this law suit, to-wit: "F. M. Haskell Plumbing & Heating Company, by F. M. Haskell" is not sufficient to make the contract binding between the Plaintiffs and this Defendant, and therefore it was incompetent, irrelevant, and immaterial, and the Court erred in overruling the objection to its being introduced and by relying on it in deciding this case.

8. The Defendant contended throughout the proceedings that the furnishing of the food and lodging done by Gaasland Company, Inc., was an act of an independent contractor for which this Defendant was not liable, which fact was well established by the depositions of F. Murray Haskell and Douglas Blair, and these facts stand admitted since they were not denied anywhere in the proceedings.

Dated at Anchorage, Alaska, this 4th day of May, 1955.

BELL & SANDERS,
/s/ By BAILEY E. BELL,
Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed May 6, 1955. Paul P. O'Brien,
Clerk.

